



## The Canada Border Services Agency Issued A Revised SIMA Reinvestigation Policy

By Cyndee Todgham Cherniak on September 10th, 2015

Posted in Antidumping, Trade Remedies



On September 10, 2015, the Canada Border Services Agency (“CBSA”) released revised D-Memorandum D-14-1-8 “Re-investigation Policy – Special Import Measures Act”. In Canada, the CBSA determines normal values, export prices and subsidy rates at the time of the initial investigation. If the Canadian International Trade Tribunal issues a positive injury decision, then the final determination normal values, export prices and subsidy rates are applicable until the CBSA conducts a re-investigation and concludes that re-investigation. Re-investigations are conducted to update normal values, export prices and subsidy rates.

In some cases, the re-investigation can occur immediately after the CITT decision (e.g., Carbon Steel Welded Pipe 2 case). In some cases, the CBSA does not conduct a re-investigation for more that 7 years (e.g., Hot Rolled Carbon and Alloy Steel Plate (6) from Ukraine).

Exporters/foreign producers who participated in the original case may request a re-investigation. Re-investigations may establish values for new products or models of subject goods and for new exporters.

According to D-Memo D-14-1-8, the following factors are taken into account when determining whether to initiate a re-investigation:

- (a) the elapsed time since the last re-investigation (consideration will be given to initiating on the anniversary of the order or finding or of the initiation of the last re-investigation);
- (b) the volume of imports of the subject goods and any fluctuations in import volume;
- (c) the presence of new products, models or exporters;
- (d) changes in the nature or amount of subsidies;
- (e) the number of requests for re-determination;
- (f) information on costs and selling prices in the industry sector or country of export;
- (g) the number of requests for a re-investigation and representations received from interested parties;
- (h) the timing of the next potential expiry review; and
- (i) any other relevant consideration.

An exporter/foreign producer may ask the CBSA to conduct a re-investigation of normal values, export prices and/or

subsidy rates. The CBSA does not have to act on the request immediately. It would be prudent to hire experienced legal counsel to assist with the presentation of the reasons why the CBSA should conduct a re-investigation. For example, if there have been significant changes to the market since the CBSA's last investigation/re-investigation, this information should be documented in the request.

If the CBSA commences a re-investigation, it intends to complete the re-investigation within 180 days. If parties who have normal values, export prices and/or subsidy rates do not participate in the re-investigation, the CBSA will re-determine their normal values, export prices and/or subsidy rates and establish the new rate at the highest "All Others" rate by Ministerial Specification. In other words, if an exporter has a good result from the original case or a previous re-investigation, they can lose that benefit if they do not participate fully in the re-investigation.

Tags: antidumping, antidumping duty, Canada Border Services Agency, CBSA, export prices, re-investigation, reinvestigation, SIMA, Special Import Measures Act, subsidy, subsidy rate

This Blog/Web Site is made available by the lawyer or law firm publisher for educational purposes only as well as to give you general information and a general understanding of the law, not to provide specific legal advice. By using this blog site you understand that there is no attorney client relationship between you and the Blog/Web Site publisher. The Blog/Web Site should not be used as a substitute for competent legal advice from a licensed professional attorney in your state.

The postings on this Blog/Web Site should not be attributed to McMillan LLP or Mitchell Silberberg & Knupp LLP. Some of the articles are posted by law students, and readers should use caution when relying on any post of a law student.

Cyndee Todgham Cherniak  
c/o LexSage Professional Corporation  
The Gooderham "Flatiron" Building, 49 Wellington Street East, Suite 501  
Toronto, Ontario  
M5E 1C9  
Phone: 416-307-4168  
Fax: 416-760-8999

Susan Kohn Ross  
c/o Mitchell Silberberg & Knupp LLP  
11377 W. Olympic Boulevard  
Los Angeles, California  
90064  
Phone: 310-312-3206  
Fax: 310-231-8406

Copyright © 2016, Canada-U.S. Blog. All Rights Reserved. Strategy, design, marketing & support by LexBlog