



# Memorandum D14-1-7

Ottawa, October 28, 2015

## Assessment and Payment of Duties Under the *Special Import Measures Act*

### In Brief

This memorandum is revised in order to integrate the information from D14-1-4, D14-1-5 and D14-1-6, to update its content and to ensure accuracy with the relevant legislation and regulations.

This memorandum explains an importer's liability for the payment of provisional, anti-dumping and countervailing duties under the [Special Import Measures Act](#) (SIMA). It also explains the procedure for posting security with respect to provisional duty as well as the exchange rate for calculations under SIMA.

## Guidelines and General Information

### Provisional Duty

1. Where the President of the Canada Border Services Agency (CBSA) (President) makes a preliminary determination of dumping and/or subsidizing in respect of any goods, goods of the same description that are imported into Canada are subject to provisional duty during the provisional period.
2. The provisional duty is the amount equal to the estimated margin of dumping and/or the estimated amount of subsidy on the imported goods.

### Liability for provisional duty

3. The importer becomes immediately liable for payment of provisional duty upon the importation of goods subject to such duty during the provisional period. The provisional period commences on the date a preliminary determination of dumping and/or subsidizing is made and ends on the earlier of the date the President terminates the investigation or on the date that the Canadian International Trade Tribunal (Tribunal) makes a finding regarding injury (within 120 days from the date of the CBSA's preliminary determination). For greater certainty, provisional duty is assessed on goods released on the day of the Tribunal's decision.
4. A liability for payment of provisional duty also arises where a Tribunal finding of no injury has been reviewed and the matter was referred back to the Tribunal for reconsideration by a binational dispute settlement panel (panel) or a court decision (see [Special Circumstances section](#)). In such situations, provisional duty is re-imposed retroactive to the date of the preliminary determination of dumping and/or subsidizing. The liability for payment of provisional duty ends on the day the Tribunal confirms its original finding or makes a new finding.
5. All active cases for which provisional duty is applicable are listed on the [Measures in Force](#) web page.

### Payment of provisional duty

6. The importer of goods imported during the provisional period shall, at the time of accounting of the goods:
  - (a) pay the determined amount of provisional duty in cash or by certified cheque; or
  - (b) post security sufficient to cover the determined amount of provisional duty payable.

7. A combination of the above mentioned methods is not possible.
8. For assistance in properly completing accounting documents and the payment of provisional duty, importers and brokers should consult the [Guide for Self-assessing SIMA duties](#).
9. Where an importer or broker normally has goods released prior to payment of duties, according to subsections 32(1) and (2) of the [Customs Act](#), goods subject to provisional duty may also be released in the same manner under the same conditions. For more information, please consult [Memorandum D17-1-5, Registration, Accounting and Payment for Commercial Goods](#).

## **Posting of security for provisional duty**

10. In general, security should be posted prior to an importation during the provisional period. However, security is acceptable for retroactive application to goods for which provisional duty was applicable. Where provisional duty was already paid, it can be returned at the request of an importer following the posting of security. In this case, no interest will be paid thereon.
11. Security must be in the form of bonds issued by a financial institution or acceptable bonding company, which is approved by the Government of Canada (see [Memorandum D1-7-1, Posting Security for Transacting Bonded Operations](#)), and in the form set out in the Appendix of this memorandum.
12. A bond must be signed by the Principal and be impressed with the corporate seal. Where the Principal's corporate seal is witnessed by an authorized official other than as set out in the Appendix to this memorandum, the bond must be accompanied by a bylaw or other evidence that the witness has authority to so bind the company.
13. A bond must also be signed by the Surety and be impressed with its corporate seal. Where the Surety's corporate seal is witnessed by a duly authorized official designated by a power of attorney, a copy of the power of attorney shall be provided upon request.
14. A bond must be filed during official business hours with the Regional Financial Services Manager of the region having jurisdiction over the point of release of the goods. Where an importer imports through more than one region, a separate bond must be filed in each regional CBSA office.
15. When the bond is posted at the regional CBSA office, the importer and/or broker should be aware that:
  - (a) the bond will be held in excess of 120 days from the date of the preliminary determination of dumping and/or subsidizing in cases where the Tribunal makes an injury finding or under special circumstances; and
  - (b) provisional duty must be included on each accounting document relating to the subject goods along with the applicable bond number.
16. Where security is posted, the goods will not be released until the value of the security has been verified to be sufficient to cover the amount of provisional duty applicable to the goods.
17. If, before the final Tribunal decision concerning injury is made, it is discovered that an accounting document does not include the provisional duty which is properly due and the importation is covered by a bond, a "non-revenue" Detailed Adjustment Statement (DAS), form B2-1, shall be used to inform Headquarters, the importer and/or broker, and the regional office who will adjust the remaining balance of the security accordingly.

## **Review of Provisional Duty After a Tribunal Finding**

### **Finding of injury**

18. For those goods that were released during the provisional period, a designated officer will make a determination of the anti-dumping and/or countervailing duties payable within six months of the date of the Tribunal order or finding, pursuant to section 55 of SIMA. These duties cannot exceed the amount of provisional duty paid or payable.
19. Where the provisional duty was paid by cash or certified cheque, and the anti-dumping and/or countervailing duties are less than the provisional duty collected, the difference will be refunded. The refund will include the amount to be refunded plus applicable interest, calculated for the period between the time duty was paid and the

time it is returned. See the, [Interest Rate for Customs Purposes Regulations](#), the [Interest Rates Table](#) web page, and the [Customs Interest Calculation Program](#) web page for additional information on the calculation of interest.

20. Security posted to cover provisional duty payable will be held until the anti-dumping and/or countervailing duties have been paid. Under no circumstances will the bond be used to cover goods released after the date of the Tribunal's decision.

21. The CBSA will issue a detailed adjustment statement (DAS) respecting the designated officer's determination pursuant to section 55 of SIMA. In certain circumstances, a letter will also be sent to the importer explaining the assessment(s) in more detail.

22. A re-determination of the normal value, the export price, or the amount of subsidy, or whether the imported goods are of the same description as the goods named in the Tribunal's injury finding can be requested in relation to the determination made pursuant section 55 of SIMA. For more information on re-determinations, please refer to the [Memorandum D14-1-3, Re-determinations and Appeals Under the Special Import Measures Act](#).

23. The assessment of anti-dumping or countervailing duty for goods imported during the provisional period will normally be based on the normal values, export prices and amounts of subsidy determined at the time of the CBSA's final determination. Where the values established at the CBSA's final determination are not considered a reasonable basis for the assessment of duty for goods imported during the provisional period because of significant changes in the exporter's costs and/or market conditions, a reinvestigation will be initiated. The purpose of the re-investigation is to establish new values based on the changed costs and/or conditions. These new values will be used to make the assessments of anti-dumping and/or countervailing duty for goods imported during the provisional period.

24. For more information on re-investigations, please refer to [Memorandum D14-1-8, Re-investigation Policy - Special Import Measures Act \(SIMA\)](#).

### **Finding of no injury/threat of injury**

25. Provisional duty paid will be refunded, or security posted will be returned to the Surety, where either the President terminates the investigation or the Tribunal finds that the dumping and/or subsidizing:

- (a) has not caused injury and is not threatening to cause injury (no injury); or
- (b) is threatening to cause injury (threat of injury).

26. Where the Tribunal finds that there is a threat of injury to the domestic industry, anti-dumping and/or countervailing duties will be applicable on goods released from customs after the date of the finding. Please consult the [Anti-dumping and Countervailing Duties](#) section for more information.

27. Where the provisional duty was paid by cash or certified cheque, the refund will include applicable interest, calculated for the period between the time duty was paid and the time it is returned. See the [Interest Rate for Customs Purposes Regulations](#), the [Interest Rates Table](#) web page, and the [Customs Interest Calculation Program](#) web page for additional information on the calculation of interest.

### **Anti-dumping and Countervailing Duties**

28. Dumped or subsidized goods imported into Canada of the same description as the goods named in a Tribunal order or finding of injury or threat of injury are subject to anti-dumping and/or countervailing duties. Anti-dumping duty is equal to the margin of dumping, that is, the amount that the normal value exceeds the export price of the imported goods. Countervailing duty is equal to the amount of subsidy on the goods. The duty assessed will normally be based on the most recently calculated normal values, export prices or amounts of subsidy.

29. For certain goods, for example capital goods, the amount of anti-dumping duty and/or countervailing duty payable cannot be conclusively established prior to the entry of the goods. In such instances, the CBSA may require access to information relating to actual production costs, as well as other information relevant to determine the normal value, the export price, or the amount of subsidy not normally available or verifiable in advance of importation. Under certain circumstances, the CBSA may provide the exporter and importer with an estimate of the assessment, based on information provided in advance of actual production and shipment. The provision of such an

estimate is not to be construed as limiting the CBSA in determining the actual assessment on the goods as provided for in SIMA.

### **Liability for anti-dumping and countervailing duties**

30. The importer becomes immediately liable for payment of anti-dumping and/or countervailing duties upon the importation of goods subject to such duty. The liability for payment commences on goods released from customs on the day after the date of the Tribunal finding of injury or threat of injury and remains until the finding is altered, rescinded or expires.

31. Where the Tribunal finds that injury has been caused by massive importations of dumped and/or subsidized goods, the importer is liable for anti-dumping and/or countervailing duties in respect of all of the subject goods released in the period commencing 90 days prior to the preliminary determination of dumping or subsidizing and ending on the date of the preliminary determination. When the Tribunal makes such a finding, retroactive assessments of anti-dumping and/or countervailing duty are made on the subject goods.

32. Liability for payment of anti-dumping and/or countervailing duties also arises where a panel or court has reviewed a decision by the Tribunal to rescind an injury order, and a panel or court has referred the rescinding order back to the Tribunal for reconsideration (see [Special Circumstances](#) section). The liability for payment of anti-dumping and/or countervailing duties recommences on the day the order is referred back, and remains unless the Tribunal, on reconsideration, confirms its rescinding order or makes a new rescinding order.

33. Where, on reconsideration of a rescinding order following a referral back by a panel or court, the Tribunal makes a new order continuing the order in force, with or without amendment, the new order takes effect from the date of the original rescinding order. In these circumstances, anti-dumping and/or countervailing duties become payable retroactively on goods described in the new order that were imported during the period commencing on the date that the Tribunal rescinded the order and ending on the date that a panel or court referred the matter back to the Tribunal.

### **Payment of anti-dumping and countervailing duties**

34. Anti-dumping and/or countervailing duties must be paid when accounting for the goods subject to such duty. Payments are made in the same way and within the same prescribed time as customs duties are paid.

35. In the case of an expedited review, a bond may be posted to cover anti-dumping and countervailing duties (see [Special Circumstances](#) section).

36. For assistance in properly completing accounting documents and the payment of anti-dumping and/or countervailing duties, please consult [Memorandum D14-1-2, Disclosure of Normal Values, Export Prices, and Amounts of Subsidy Established under the Special Import Measures](#) and the [Guide for Self-assessing SIMA duties](#).

37. Pursuant to section 56 of SIMA, a CBSA officer may, within 30 days after the goods have been accounted for, determine:

- (a) whether the goods are the same as those described in the Tribunal's order or finding;
- (b) the normal value or amount of subsidy; and
- (c) the export price or amount of export subsidy

38. Where, in the case of any imported goods, a determination pursuant to section 56 is not made within 30 days, that determination is deemed to have been made on the 30<sup>th</sup> day after the goods were accounted for and in accordance with any representations made by the person accounting for the goods at the time of accounting.

39. Where a CBSA officer makes a determination pursuant to section 56, and the proper amount of anti-dumping duty or countervailing duty was not paid, the CBSA will demand payment on Form B2-1, *Canada Customs – Detailed Adjustment Statement (DAS)*. If it is determined that the importer overpaid the anti-dumping or countervailing duty, a DAS will be issued and the overpayment will be refunded.

40. A designated officer or the President may re-determine the normal value, the export price, or the amount of subsidy of any goods, or whether the imported goods are the same as the goods described in an injury finding of the Tribunal, within two years of the determination made pursuant to section 56 of SIMA.

41. The importer of the goods may, within 90 days after the date of the determination or re-determination made by the CBSA, make a request for a re-determination of the determination or re-determination, if the importer has paid all duties owing on the goods. In the case of goods of a NAFTA country, the government of that NAFTA country or the producer, manufacturer or exporter of the goods, if they are of that NAFTA country, may also file a request. These requests will be reviewed whether or not the importer has paid the duties owing on the goods. The procedures for such requests are outlined in [Memorandum D14-1-3, \*Re-determinations and Appeals Under the Special Import Measures Act\*](#).

42. Subject goods imported after the Tribunal's injury finding will normally be assessed anti-dumping or countervailing duty based on the values determined at the time of the final determination until these values are revised as a result of a re-investigation. The revised normal values, export prices, or amounts of subsidy will apply to all importations of goods released on or after the date the re-investigation is concluded or the date of the decision letter to the exporter, whichever occurs first. For more information on re-investigations, please refer to [Memorandum D14-1-8, \*Re-investigation Policy – Special Import Measures Act \(SIMA\)\*](#).

### **Late payment of duties**

43. Any person who fails to pay anti-dumping duty, countervailing duty, provisional duty, or post security within 30 days of the release of the goods will be required to pay, in addition to the amount owing, interest on the amount outstanding.

44. If a re-determination results in additional duty owing, the CBSA issues a DAS. Interest on the amount owing is charged at the specified rate for the period beginning on the first day after the day the person became liable to pay the amount (i.e. the accounting date) and ending on the date of the DAS. Failure to pay the total amount shown on the DAS within 30 days of the date of decision will result in additional interest charges issued under the [Customs Act](#).

45. For additional information on the calculation of interest, please refer to [Interest Rate for Customs Purposes Regulations](#), the [Interest Rates Table](#) web page, and the [Customs Interest Calculation Program](#) web page.

### **Exchange Rate for SIMA Purposes**

46. Sections 44 and 45 of the [Special Import Measures Regulations](#) provide that the rate of exchange used in the administration of SIMA shall be the rate on the date of sale of the goods to Canada or, where sufficient information has not been provided or is not available when the goods are released from customs or enter a warehouse to enable the calculation to be made on the basis of the date of sale, the date of direct shipment to Canada shall be used in place of the date of sale. The rate of exchange for a particular date is determined by regulations established under the authority of the [Currency Act](#). The rate to be used shall be the rate of exchange for the concerned currency as quoted to the Minister by the [Bank of Canada](#), a chartered bank or as quoted by the [Financial Times](#) of London, in that order.

47. In rare situations, an importation may be directly linked to a sale of foreign currency on forward markets. In such circumstances, the rate of exchange in the forward sale of currency shall be used in place of the rate of exchange on the date of sale. Where an importer claims entitlement to such a rate, the Enforcement officer assigned to the case, as listed on the [Measures in Force](#) web page, should be contacted.

48. Information on exchange rates is disseminated through the Customs Automated Data Exchange System and is also available toll free through the [Border Information Service](#).

49. Importers of any goods that are subject to provisional, anti-dumping and/or countervailing duties should ensure that the date of sale is indicated in the customs documentation.

50. In accordance with subsection 2(1) of SIMA, "sale" includes leasing and renting, an agreement to sell, lease or rent and an irrevocable tender. Consequently, the date of the agreement to sell, lease or rent or the irrevocable tender is the date of sale to be used.

51. The date of direct shipment is normally the date of shipment indicated on the invoice.

### **Current anti-dumping and countervailing measures in force**

52. For information on current measures in place, product descriptions, exclusions, dates on which duties are applicable and other information that will help you determine whether your imported goods are subject to SIMA duties, please consult the CBSA's [Measures in Force](#) web page.

### **Special Circumstances**

#### **Expedited review**

53. Where goods, subject to anti-dumping and/or countervailing duties are released during an expedited review, the importer must post security in the form of cash, cheque, or bond to cover the payment of the duties. An expedited review is conducted promptly for a new exporter, where certain criteria are met, for the purposes of establishing normal values or amounts of subsidy. At the conclusion of the expedited review, designated officers finalize the assessments of anti-dumping and/or countervailing duties.

#### **Federal court or binational panel review of a Tribunal order or finding**

54. An order or finding of the Tribunal may be set aside following an application under section 96.1 of SIMA or pursuant to the provisions of the [Federal Courts Act](#). Where the decision is set aside and referred back, section 44 of SIMA requires that the inquiry be recommenced by the Tribunal. Should the decision be set aside but not referred back, the Tribunal is authorized to decide, within 30 days, whether or not to recommence its inquiry. More information on the Tribunal's procedures can be found on the [Tribunal's web site](#).

55. Under subsection 77.016 of SIMA, orders or findings of the Tribunal relating to goods of a NAFTA country can be referred by a binational panel back to the Tribunal, which shall then take action under SIMA that is not inconsistent with the decision of the panel.

56. The referral back by the Federal court or a binational panel of a no injury finding results in the imposition of provisional duty.

57. If the Tribunal confirms that the dumping and/or subsidizing has not caused and is not threatening to cause injury or finds that the dumping and/or subsidizing is threatening to cause injury, the provisional duty paid will be refunded or security posted will be returned. If the Tribunal makes an injury finding, duty will be refunded or collected in accordance with the CBSA's final determination, as laid out previously in the [Review of Provisional Duty After a Tribunal Finding section](#).

58. Where a Tribunal's order rescinding an order or finding is set aside, payment of duties recommences on the day the order is set aside, and remains unless the Tribunal, on reconsideration, confirms or makes a new order. Where the Tribunal makes a new order continuing the order or finding, duties are payable retroactively on goods imported commencing on the date that the Tribunal previously rescinded the order. Where the Tribunal, on reconsideration, confirms the order rescinding an order or finding, any anti-dumping and/or countervailing duties paid will be refunded.

### **Additional Information**

59. 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**.

## Appendix

### Bond to Secure Payment of Provisional Duty Under the *Special Import Measures Act*

Bond #

Amount \$

**Know all men by these presents:**

that we ( ) of ( ) in the Province of ( ) hereinafter called the “Principal” and ( ) hereinafter called the “Surety”, are jointly and severally bound unto our Sovereign Lady the Queen, her heirs and successors, as represented by the President of the Canada Border Services Agency hereinafter called the “Obligee”, in the penal sum of ( ) dollars of the lawful money of Canada, to be paid to the said Obligee for which payments well and faithfully to be made we jointly and severally bind ourselves and our respective heirs executors administrators successors and assigns firmly by these presents sealed with our respective seals and dated the ( ) day of ( ) in the year ( ).

Whereas the Principal is required to pay provisional duty on **(describe the goods)** released from the CBSA on and after **(set out the date of the preliminary determination)** at the CBSA office(s) of **(set out the name of the CBSA office(s))** and wishing to delay the payment of such duty is required to deposit security for the purpose of securing the payment of all provisional duty on the said goods released from the CBSA on and after **(set out the date of the preliminary determination)**.

Now the condition of the above written obligation is such that if the Principal shall pay all the provisional duties payable under the *Special Import Measures Act* on the said goods, and shall well and truly perform and fulfill the obligations imposed on the said Principal by the *Special Import Measures Act*, then this obligation shall be void and of no effect, but otherwise shall be and remain in full force, virtue and effect.

Notice of any claim hereunder shall be given to the Surety by registered mail or by personal service within one year of the last day on which provisional duties are imposed on the said goods under the *Special Import Measures Act*.

**In witness whereof** the Principal has hereunto set his hand and seal (if the Principal is an individual) or has caused these presents to be sealed with its corporate seal, attested to by the signatures of its duly authorized officials (if the principal is a corporation), and the Surety has caused these presents to be sealed with its corporate seal, attested to by the signature of its duly authorized official(s), the day and year first above written.

Signed, sealed in the presence of:

1. (Witness to individual’s signature Principal) / Seal (Individual):

or

1. (President (or other authorized official of principal)) / Principal’s corporate seal (Company):  
(Secretary (or other authorized official of principal))

2. (Duly authorized official (title)) / Surety’s corporate seal:

<b>References</b>	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	4205-13
<b>Legislative References</b>	<a href="#"><i>Special Import Measures Act</i></a> <a href="#"><i>Currency Act</i></a> <a href="#"><i>Federal Courts Act</i></a> <a href="#"><i>Customs Act</i></a> <a href="#"><i>Special Import Measures Regulations</i></a> <a href="#"><i>Interest Rate for Customs Purposes Regulations</i></a>
<b>Other References</b>	<a href="#">D1-7-1</a> , <a href="#">D14-1-2</a> , <a href="#">D14-1-3</a> , <a href="#">D14-1-8</a> , <a href="#">D17-1-5</a>
<b>Superseded Memorandum D</b>	D14-1-7 dated May 16, 2013; and D14-1-4 dated January 21, 2009 D14-1-5 dated May 23, 2013 D14-1-6 dated August 27, 2008