



# Memorandum D14-1-3

Ottawa, March 21, 2017

## Re-determinations and Appeals Under the *Special Import Measures Act*

### In Brief

This memorandum has been revised to edit hyperlinks and does not affect or change any of the existing process to request a re-determination by the President.

This memorandum explains the procedures to request re-determinations and file appeals under the [Special Import Measures Act](#) (SIMA).

### Legislation

[Special Import Measures Act](#), sections 56 to 61, 77.01, 77.011, 77.012, 77.11, 77.12, and 96.1

[Special Import Measures Regulations](#), sections 36.04, 46 to 52

[Federal Courts Act](#), sections 18 and 28

## Guidelines and General Information

1. After an assessment of anti-dumping and/or countervailing duties has been made, SIMA provides for several levels of re-determinations and appeals. Re-determinations can be made by a designated officer or the President of the Canada Border Services Agency (CBSA) (President). The President's re-determination may be further appealed to the Canadian International Trade Tribunal (Tribunal), or to a binational panel in the case of goods of a North American Free Trade Agreement (NAFTA) country.

### Filing a Request for Re-determination With the CBSA

#### General

2. The first level of review for a determination or deemed determination made under section 56 of SIMA is a designated officer re-determination. Under section 57 of SIMA, the designated officer may re-determine any determination where a request is made, or where the designated officer deems it advisable. The second level of review is a re-determination by the President. Under section 59 of SIMA, the President may re-determine any determination or re-determination made by a designated officer where a request is made, or where the President deems it advisable.

3. A request for re-determination cannot be filed with respect to provisional duties as these duties will either be refunded or finalized after a Tribunal order or finding. With respect to the final assessments of these duties, a request for re-determination may be filed with the President.

4. For information on the liability, payment and refund of provisional, anti-dumping, or countervailing duty, and on the CBSA's enforcement of the Tribunal findings or orders, please see [Memorandum D14-1-7, Assessment and Payment of Duties Under the Special Import Measures Act](#).

### **What can be re-determined?**

5. A request for re-determination may cover:

- (a) the normal value;
- (b) the export price;
- (c) the amount of subsidy;
- (d) the amount of the export subsidy; or
- (e) whether the goods are of the same description as those described in the order or finding of the Tribunal or in the order of the Governor in Council.

### **Who can file a request for re-determination?**

6. A request may be filed by the importer or the importer's agent. An importer may submit a request to the CBSA only if all duties owing on the goods have been paid. The CBSA will reject requests when importers have not paid the duties for the goods at issue.

7. 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 file a request. These requests will be reviewed whether or not the importer has paid the duties owing on the goods.

### **What is the time limit for filing a request for re-determination?**

8. A request for re-determination must be filed within 90 days of the CBSA officer's or the designated officer's decision.

9. If the 90<sup>th</sup> day after the date of the decision falls on a Saturday, Sunday or holiday, the final day for making a request for re-determination will be the next business day.

10. The date of receipt of a request for re-determination, or the date of the registered postmark when delivered registered mail, is considered to be the date that the request is made.

### **How to file a request for re-determination?**

11. A separate request on [form B2, Canada Customs – Adjustment Request](#), must be made for every transaction with respect to the goods that are the subject of the request for re-determination, except in the case of [blanket requests](#).

12. Importers must submit the following information (as attachments under field No. 37 of the B2):

- (a) a statement setting out the grounds on which the determination or re-determination is contested;
- (b) a statement setting out the facts on which the request for re-determination is based;
- (c) evidence in support of the facts referred to in subparagraph (b) above; and
- (d) a copy of the original (i.e., interim and final) accounting document package.

13. The importer should also include the phone number and the name of the appropriate company official to contact.

14. The final accounting document package should include, at a minimum, the customs invoice or a commercial invoice (which meets the [CBSA's invoice requirements](#)); the cargo control document; and any required certificate and/or permits. It should also include the [form B3-3, Canada Customs Coding Form](#), if available.

15. Other documents may facilitate an expeditious resolution of the request, for example, the purchase order or sales contract, commercial invoice and letter of credit. In cases where an importer is questioning whether the imported goods are those described in an order or finding of the Tribunal, the evidence to be submitted should include samples of the imported product, product literature/specifications, certificates of specification, and purchase documents describing the goods in detail (for example, purchase order, commercial invoice, etc.). In all

cases, a copy of the Detailed Adjustment Statement (DAS), showing the “duty paid” stamp, will facilitate verification that the duties have been paid.

16. For further information on completing the [form B2](#), please refer to [Memorandum D17-2-1, The Coding, Submission and Processing of Form B2 Canada Customs Adjustment Request](#). Also, please refer to the [Guide for self-assessing SIMA duties](#) web page for more information on the SIMA codes and their interpretations.

### **Goods of a NAFTA country**

17. The prescribed form for making a request for re-determination by appellants from a NAFTA country is also the [form B2](#). Since this was originally designed for use by importers, certain fields of the form should be modified in the following manner:

- (a) field 10 – the reference to “mail to” should be struck out and replaced with “name and address of the appellant from a NAFTA country”; and
- (b) declaration field – the reference to “importer/agent” should be struck out and replaced with “appellant from a NAFTA country.”

18. Completion of the following fields is mandatory for appellants from a NAFTA country:

- (a) field 1, “importer name and address”
- (b) field 6, “original transaction number”
- (c) field 10, “name and address of the appellant from a NAFTA country”
- (d) field 37, “justification for request,” “explanation,” and “declaration.”

19. The appellants from a NAFTA country must submit the following information (as attachments under field No. 37 of the B2):

- (a) a statement setting out the grounds on which the determination or re-determination is contested;
- (b) a statement setting out the facts on which the request for re-determination is based; and
- (c) evidence in support of the facts referred to in subparagraph (b) above.

20. Completion of the remaining fields is optional for appellants from a NAFTA country. Where the appellant from a NAFTA country has access to the information required for proper completion of the remaining fields, completing them may facilitate the processing of the request.

### **What are blanket requests?**

21. A blanket request is a procedure through which an importer may request re-determinations on more than one transaction on a single form B2. This can be done under specific conditions, provided that both the public and the CBSA receive administrative benefits. Under the blanket request procedure, the same designated officer or President's decision is issued with respect to each transaction included in the request. Written authorization must be obtained prior to submitting the form B2 covering multiple transactions.

22. Prior to requesting a designated officer re-determination under subsection 56(1.01) or 56(1.1) of SIMA, a letter requesting authorization for a blanket request and explaining the issue that is being contested must be sent to the attention of the Manager of the SIMA Compliance Unit, Trade and Anti-dumping Programs Directorate at the address noted in the section [Where to send the request?](#).

23. Prior to requesting a President re-determination under subsection 58(1.01) or 58(1.1) of SIMA, a letter requesting authorization for a blanket request and explaining the issue that is being contested must be sent to the attention of the Manager of Trade Appeals and Litigation, Recourse Directorate, at the address noted in the section [Where to send the request?](#).

24. Where a blanket request may result in administrative difficulties or processing delays, the CBSA may refuse the request or restrict the number of transactions to be included on the B2 form.

25. Upon receiving the authorization from the CBSA and in addition to the requirements outlined in the section [How to File a Request for Re-determination?](#) above, the following information or conditions apply:

- (a) the original letter of authorization from the SIMA Compliance Unit Manager may be used for all subsequent B2 forms, provided that the issue to be considered is the same as the issue mentioned in the letter requesting the authorization;
- (b) a blanket request cannot cover any transaction for which appeal rights have expired;
- (c) in addition to the blanket request covering the identical issue being contested, all the transactions must concern shipments of goods to the same importer; and
- (d) all blanket B2 forms must be supported by an electronic copy of a detailed worksheet and a copy of the written authorization, permitting the use of the blanket request. The information to be submitted on the worksheet will include a listing of original transaction numbers in chronological order by date of final accounting, grouped by month, with subtotals for each month.

### **Where to send the request?**

26. Requests for re-determination are mailed to the CBSA as follows:

- (a) Requests filed pursuant to subsection 56(1.01) or 56(1.1) of SIMA for a re-determination by a designated officer must be addressed to the Director General of the Trade and Anti-dumping Programs Directorate and must be sent to:

SIMA Registry and Disclosure Unit  
Trade and Anti-dumping Programs Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11th Floor  
Ottawa, Ontario  
K1A 0L8

- (b) Requests filed pursuant to subsection 58(1.1) or 58(2) of SIMA for a re-determination by the President of the CBSA, as well as notices of appeals made under section 61 of SIMA, must be addressed to the Director of Trade Appeals and Litigation, Recourse Directorate, and must be sent to:

Trade Appeals and Litigation  
Recourse Directorate, CBSA  
Vanier Tower A, 11th Floor  
333 North River Road  
Ottawa, Ontario  
K1A 0L8

### **What happens when a request for re-determination is filed?**

27. Where a request for re-determination is filed properly, the CBSA will review the information, evidence, facts and arguments. In the case of anti-dumping duties, the re-determination will be on the basis of normal values and export prices, using information from the same period as the date of sale to Canada of the imported goods, or the most recently available information before that. In the case of countervailing duties, the re-determination will be based on the amount of subsidy on the imported goods, using the most recently calculated amount of subsidy.

28. Importers are reminded that a request for re-determination will not necessarily result in the reimbursement of duty and may result in the assessment of additional duty.

29. 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](#).

30. If a re-determination results in a refund of all or part of the duty paid, the CBSA issues a DAS and returns the excess duty paid. The refund will include, in addition to the excess amount, interest at the prescribed rate for the period beginning on the first day after the day the amount was paid and ending on the day the DAS was issued. This amount will not include any interest paid by the importer as a result of a late payment.

31. The amount of interest either collected or paid by the CBSA is shown on the DAS. The specified and prescribed interest rates are calculated quarterly and can be found on the [Interest Rates Table](#) web page.

### **What happens if the request is filed late?**

32. Generally, requests for re-determination that are submitted late will be rejected.

33. An exception will be made where, based on the data that were before the CBSA at the time of the earlier determination, too much duty was collected as a result of an obvious error made by the CBSA. In such cases, the overpayment will be refunded, if the importer files a late request for re-determination or writes a letter explaining the situation. See the next question for more information.

### **Can the CBSA make a re-determination without a request being made?**

34. A designated officer or the President of the CBSA may make a re-determination within two years of the original determination.

35. The CBSA will use the two-year discretionary provision where:

- (a) the self-assessment was based on incorrect information used by the importer or customs broker, resulting in an overpayment of anti-dumping or countervailing duties;
- (b) the goods are obviously not subject to the Tribunal's finding on the basis of the definition of "subject goods" in existence at the time of release of the goods; or
- (c) the importer files a late request for re-determination or sends a letter explaining that too much duty was collected as a result of an obvious error made by the CBSA.

### **What is a voluntary amendment/payment?**

36. An importer may wish to amend a transaction voluntarily and, as a result, pay additional duties and taxes. Alternatively, an importer may amend an entry to correct clerical or typographical errors, which may have no effect on the amount of duties paid. In both circumstances, the importer submits a request for re-determination.

37. Voluntary amendments are not restricted to the 90-day time limit. Where possible, they should be made within one year of the date of release of the goods.

38. Where applicable, monies owed to the CBSA should accompany a request for amendment.

39. Voluntary amendments or payments should be mailed or delivered to the CBSA's [SIMA regional offices](#) where the goods were released.

### **Filing an Appeal of a President's Re-determination**

40. After the President makes a re-determination under section 59 of SIMA, a person who deems himself aggrieved may appeal the re-determination to the Canadian International Trade Tribunal under section 61 of SIMA.

41. A notice of appeal must be filed in writing within 90 days after the day on which the re-determination was made, with both the Tribunal and the CBSA ([Where to send the request?](#)). For additional information on the Tribunal's procedures, please consult the [Tribunal's Appeals FAQ's](#) and the [Information for Appellants – Appeal Proceedings](#) web pages.

42. A decision of the Tribunal may be appealed to the Federal Court of Appeal under section 62 of SIMA. The appeal must be based on questions of law and be filed within 90 days of the decision by the Tribunal. The Federal Court of Appeal may dispose of an appeal by declaring the duty, if any, that is payable, or by returning the matter to the Tribunal for re-hearing.

43. After the Tribunal has made a decision with respect to the goods, the President may, at any time after the Tribunal's order or finding, re-determine a determination on other goods of the same description imported by the same importer and released after the date of the transaction subject to the appeal. Importers who have any doubt about whether the appellate decision will apply to the subsequent goods should contact the case enforcement or appeal officer as listed on the [Measures in Force](#) web page for confirmation that the goods in question are considered to be subsequent goods, or file an appeal under section 61 within the required time limits.

### **Filing an Appeal of a President's Re-determination for Goods From a NAFTA Country**

44. SIMA provides for two methods to dispute a section 59 re-determination respecting goods of a NAFTA country:

- (a) a request for a review by a binational panel in accordance with Article 1904 of the NAFTA; or
- (b) an appeal to the Tribunal.

45. Any person aggrieved by a President's re-determination respecting goods of a NAFTA country may use either process. However, where a binational panel review is requested, an appeal to the Tribunal on the same re-determination cannot be made.

#### **Appeal to a binational panel**

46. Subsection 77.011(2) of SIMA provides, among other things, that any person, who could appeal a President's section 59 re-determination relating to goods of a NAFTA country to the Tribunal, may request that the decision be reviewed by a binational panel. The request for review would have to be filed with the [Canadian Secretary](#), NAFTA Secretariat.

47. The government of the NAFTA country, the importer, the manufacturer, the producer or the exporter may file a request for a binational panel review, no later than 40 days after the date of the letter of notification of the re-determination.

48. On receipt of a request for a binational panel review, the Canadian Secretary is required to notify the appropriate NAFTA country Secretary of the request and date of receipt. All interested persons may participate in the panel review, if they file a Notice of Appearance with the Canadian Secretary, in accordance with the NAFTA Article 1904 Panel Rules. Additional information on the panel process may be obtained from the Canadian Secretary.

49. Persons interested should note that where another party requests a binational panel review within the 40-day limitation period, the Tribunal is not permitted to consider an appeal. However, all interested persons may participate in the binational panel review, if they file a Notice of Appearance with the Canadian Secretary of the NAFTA Secretariat, in accordance with the NAFTA Article 1904 Panel Rules.

#### **Appeal to the Tribunal**

50. A re-determination by the President, made under section 59 of SIMA, on goods of a NAFTA country, may be appealed to the Tribunal, under section 61 of SIMA. The procedure for such an appeal is essentially the same as for goods from a non-NAFTA country (explained in the above section: [Filing an Appeal of a President's Re-determination](#)). However, some conditions must be met before a person may appeal a re-determination regarding goods of a NAFTA country to the Tribunal.

- (a) Any importer, manufacturer, producer or exporter intending to appeal the President's re-determination to the Tribunal must publish a notice of intent to appeal in the *Canada Gazette*. In addition, a Notice of Intent to Commence Judicial Review is to be served to both Secretaries of the NAFTA countries. These procedures are outlined in section 36.04 of the [Special Import Measures Regulations](#) and subrule 33(1)(a) of the NAFTA Article 1904 Panel Rules. Both of these notices are to be submitted within 30 days following the date of the CBSA's letter containing the re-determination.
- (b) A binational panel review must not have been requested and the 40-day limitation period for requesting such a review has expired.

51. If these conditions are met, a person may file a notice of appeal in writing with both the CBSA ([Where to send the request?](#)) and the Tribunal within 90 days after the date of the re-determination in question.

### Additional Information

52. 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**.

References	
<b>Issuing Office</b>	Trade and Anti-dumping Programs Directorate
<b>Headquarters File</b>	4205-12-3
<b>Legislative References</b>	<a href="#"><i>Special Import Measures Act</i></a> <a href="#"><i>Special Import Measures Regulations</i></a> <a href="#"><i>Federal Courts Act</i></a> <a href="#"><i>Interest Rate for Customs Purposes Regulations</i></a>
<b>Other References</b>	<a href="#">D14-1-7</a> , <a href="#">D17-2-1</a>
<b>Superseded Memorandum D</b>	D14-1-3 dated June 28, 2016