



Memorandum D14-1-8

Ottawa, July 19, 2019

Re-investigation and Normal Value Review Policy – *Special Import Measures Act (SIMA)*

In Brief

Revisions were made in this memorandum to explain a new procedure for submitting representations to the CBSA in respect of the need for updated values as well as a new review process that will be conducted by the CBSA, referred to as normal value reviews. Normal value reviews are similar to re-investigations with the exception that each review is conducted in respect of a single exporter.

This memorandum explains the policy for the conduct of re-investigations and normal value reviews in order to update normal values, export prices, and/or amounts of subsidy applicable to imported goods covered by orders or findings of the Canadian International Trade Tribunal (CITT).

Guidelines and General Information

1. The CBSA recognizes the importance of keeping prospective normal values, export prices and amounts of subsidy (also collectively referred to as “values”) up-to-date in order to ensure effective enforcement of the Canadian International Trade Tribunal’s (CITT) orders and findings.
2. Re-investigations and normal value reviews are administrative proceedings conducted to update values; establish values for new products or models subject to the measures in force; and establish values for exporters that do not currently have values.
3. Re-investigations are conducted in respect of all exporters of goods originating in or exported from a country or countries covered by the CITT’s order or finding, whereas normal value reviews are conducted in respect of a single exporter subject to the CITT’s order or finding. Other than through investigations and expedited reviews, normal values will only be issued through re-investigations and normal value reviews.
4. Although up-to-date values are important, proceedings legislated by SIMA – i.e. investigations, scope proceedings, anti-circumvention investigations and expiry review investigations – take precedence as statutory deadlines must be respected.
5. As part of the CBSA’s formal monitoring process, interested persons are encouraged to share their views regarding whether the values in place for a particular measure in force should be updated to reflect the current market conditions.

6. For a re-investigation, interested persons include domestic producers, importers/exporters during the period covered by the re-investigation, relevant unions and trade associations, and foreign governments in cases where amounts of subsidy are being updated. For normal value reviews, interested persons only include domestic producers, the exporter for which normal values will be issued, importers who purchased goods from the exporter, relevant unions and trade associations, and foreign governments in cases where amounts of subsidy are being updated.

7. Note that exporters with specific values are required to advise the CBSA when there are changes in market conditions, prices, costs and terms of sale that could reasonably be expected to have an impact on those values. Exporters are also advised to adjust their selling prices to Canada so that the export price of subject goods sold to Canada are reflective of the domestic selling price and cost increases. Where such changes are deemed by the CBSA to be significant, the normal values will be updated to reflect the changed conditions. Normal values may be applied retroactively in cases where the parties have not adjusted the selling prices of subject goods sold to Canada to reflect increases in domestic selling prices and costs. This is discussed further in the Retroactive Assessment section below.

Making Representations

8. Interested persons may make representations respecting the need for a re-investigation or normal value review to update values for a particular measure in force. These representations should be sent to the SIMA Registry and Disclosure Unit at the address specified on the [CBSA's website](#). The onus is on the interested person to clearly identify the relevant measure in force and provide information that is reasonably available to demonstrate the need for updated values, such as changing domestic selling prices; changing production and/or selling costs; changes to distribution channels, including the involvement of related parties in sales to Canada; changes in market conditions which may impact values; or changes in amounts of subsidy received. This should be provided to the CBSA in a timely manner, generally within 30 days of the market changes. Interested persons may also suggest issues they wish the CBSA to examine in the course of a potential re-investigation or normal value review, including possible questions that could be included in the CBSA's Requests for Information.

9. Where an interested person makes representations containing information that is designated as confidential, the confidential version of the representations must be accompanied by a non-confidential version in order for the CBSA to take it into consideration. In cases where exporters are required to provide the CBSA with periodic pricing and cost information as part of the conditions attached to the issuance of their normal values, a non-confidential summary is also required. For more information, refer to the CBSA's [Administrative Guideline for Submission of Confidential and Non-Confidential Information](#). Failure to provide an adequate non-confidential version will result in the submission being disregarded and excluded from any consideration. It should be noted that these representations are not submitted as part of an ongoing SIMA proceeding. As a result, confidential information provided to the CBSA will not be disclosed to counsel representing other interested persons.

10. Where representations are received, the CBSA will publish the non-confidential version of the representations on its website and, as a result, it will be available to other interested persons. In this regard, the CBSA maintains an inventory on its [website](#) of the correspondence received for each measure in force. The CBSA also maintains an email alert service which notifies subscribers of the availability of new documents. This email alert service can be subscribed to on the [CBSA's website](#). Other interested persons may respond to any representations. However, any such responses should identify the associated correspondence and be submitted in a timely manner, generally within seven days, in order to ensure that the CBSA can take them into consideration.

11. The CBSA will acknowledge receipt of all representations, including any responses submitted by interested persons, and take them into consideration. These representations are one of the factors that the CBSA considers when determining whether to initiate a re-investigation or normal value review. Ultimately, the decision to initiate a re-investigation or normal value review rests with the CBSA. If the CBSA decides to initiate a re-investigation or normal value review, including as a result of requests to do so from interested persons, it will publish an initiation notice on its website. The subscribers of the email alert service will be notified of such initiations.

Considerations for Initiating a Re-investigation or Normal Value Review

12. In consideration of any representations received and other information available to and deemed relevant by the CBSA, the following factors are taken into account when determining whether to initiate a re-investigation or normal value review, as appropriate:

- a) the volume of imports of the subject goods and fluctuations in import volume;
- b) the elapsed time since values were last issued; the nature of the subject goods;
- c) the presence of new models or products imported;
- d) the presence of new exporters of the subject goods;
- e) changes in the selling prices in the exporter's home market;
- f) changes in the selling prices in the exporter's third country export markets;
- g) changes in the exporter's costs;
- h) fluctuations in the currency exchange rate;
- i) changes in the nature or amount of subsidies;
- j) changes in the channels of distribution for the goods sold to Canada;
- k) changes in any other manner in which the goods were sold to Canada;
- l) the need to review the export prices, such as where exporters are associated with the importers;
- m) the number of requests for re-determination;
- n) the timing of the next potential expiry review;
- o) resources available; and
- p) any other relevant consideration.

13. Depending on the results of the CBSA's analysis, a decision will be made as to whether normal values, export prices and/or amounts of subsidy for a certain measure in force need to be updated. For example, if several years have elapsed since the values were last issued, the costs and domestic selling prices of the goods have risen considerably over the past two-year period, and a significant number of new products are currently being imported into the Canadian market, the CBSA would consider this a strong case for conducting a re-investigation or normal value review. Where multiple measures in force require updated values, the CBSA will evaluate the competing priorities to determine the order in which to update them.

14. Where the results of the CBSA's analysis indicate that one or more of the following circumstances exist, generally a normal value review will be conducted:

- where a significant volume of the imports of the subject goods are from a particular exporter or a limited number of exporters (i.e. generally less than four);
- where there are new models, they are limited to a particular exporter or limited number of exporters;
- where there are a limited number of new exporters in the market who have requested to be part of the next re-investigation (rather than obtaining values through an expedited review);
- where there are factors impacting export prices, they are limited to a particular exporter or a limited number of exporters;
- where representations are made in respect of a particular exporter or the issue raised impacts a limited number of exporters; and
- where a request for a re-determination has been filed by an importer, which includes a request that normal values be issued for its exporter.

15. Conversely, in the following circumstances, the CBSA will generally conduct a re-investigation:

- where there are many exporters who have exported subject goods to Canada since the conclusion of the last proceeding (i.e. volume more evenly dispersed amongst exporters);
- where there is a new model exported by multiple exporters (i.e. generally four or more);
- where there are multiple new exporters in the market who have requested to be part of the next re-investigation (rather than obtaining values through an expedited review);
- where factors impacting export prices are not limited to a particular exporter or a limited number of exporters;
- where the issues raised in representations impact multiple exporters;
- where information from a variety of industry participants will likely be sought (e.g. to consider updating an industry profit amount);
- where there are a large number of requests for re-determinations and/or updated values in respect of multiple exporters; and
- there is an expiry review potentially upcoming.

16. Where both anti-dumping and countervailing duties are in place against subject goods, a re-investigation or normal value review will be initiated only in respect of the values that need to be updated. A re-investigation or normal value review to update normal values and export prices may be initiated without initiating a corresponding re-investigation or normal value review into amounts of subsidy, or vice versa.

17. In a re-investigation or normal value review, the CBSA is not bound by methodologies used in a prior proceeding when determining normal values and export prices and may change methodologies based on the particular facts and circumstances of the re-investigation; however, for normal value reviews, the scope would be limited to circumstances directly related to the exporter and not the country or market as a whole. If circumstances indicate a broader scope than would be found in a normal value review, a re-investigation would be more appropriate. The CBSA may issue supplemental questionnaires relating to any matter considered relevant by the CBSA that arises during the course of a re-investigation or normal value review.

Re-investigation and Normal Value Review Processes

18. When the CBSA initiates a re-investigation or normal value review, it will notify interested persons as appropriate. These notices contain detailed information about the proceeding, including which values are being updated, and will indicate that the updated values will come into effect on the date the proceeding is concluded. As applicable, interested persons will be requested to provide the information necessary to update the values in accordance with the provisions of the *Special Import Measures Act* (SIMA). A notice of the initiation and the schedule of key dates, including when responses to requests for information are due from importers and exporters, are published on the CBSA's [Re-investigation](#) or [Normal Value Review](#) webpage. Note that late or incomplete submissions may not be taken into consideration.

19. Where a re-investigation has been initiated, exporters who wish to participate but who have not been notified and have not been requested to provide information must contact the SIMA Registry and Disclosure Unit at the address specified on the [CBSA's website](#) and request a Request for Information at the earliest opportunity.

20. The CBSA will, where possible, conclude a re-investigation within 180 days of the initiation date. A normal value review will typically take a similar length of time to complete, however it may take more or less time depending on the circumstances of the review. Each schedule will vary depending on the circumstances of the case and the CBSA may adjust the schedule as necessary.

21. In re-investigations and normal value reviews, a date for the close of the administrative record will be established, after which no further information may be submitted by parties.

22. For normal value reviews, a specific date for the close of record is not usually listed in the schedule at initiation. Instead, as the case only involves one exporter, the CBSA will close the record when it determines it has the information it needs to make a decision. This would usually be once it has verified the exporter's information. Where the exporter does not respond to a request for information or supplemental requests for information, or provides an incomplete response, the CBSA will terminate the normal value review.

23. The CBSA may add additional exhibits (e.g., verification exhibits, post-verification reports, conclusion documents, etc.) on the record after the close of the record date. In accordance with its guidelines for late submissions, it may also add exhibits from interested persons after the close of record. In such cases, the CBSA may adjust the schedule, if appropriate, to allow other interested persons time to submit case arguments and reply submissions for those exhibits only.

24. All parties notified at the time of initiation will also be notified of the conclusion and the results as they pertain to them. The CBSA also publishes a public notice of the conclusion of the re-investigation or normal value review on the CBSA's [Re-investigation](#) or [Normal Value Review](#) webpage.

25. In general, the new values will be effective for the subject goods released from customs on or after the date the re-investigation or normal value review is concluded or the date of the decision letter to the exporter, whichever occurs first. Please refer to [Memorandum D14-1-2](#) for information on the disclosure of values to importers.

26. Information obtained during the re-investigation or normal value review may be used to determine values in respect of requests for re-determinations that have not been processed by the CBSA as of the date the re-investigation or normal value review is concluded. This may result in an additional duty assessment or a refund depending on the specific situation. Please consult [Memorandum D14-1-3](#) for information on re-determinations and appeals procedures.

27. Normal values are usually stated in the domestic currency of the country of export or the country of origin. Where the exchange rate for the domestic currency is subject to frequent and volatile changes, and there is indication that normal values will need to be frequently updated if stated in the domestic currency as a result of this volatility, the normal values will be stated in Canadian dollars. For example, if the domestic currency of the country of export has depreciated considerably over the past two-year period and this volatility is expected to continue in the future, the CBSA would issue the normal values in Canadian dollars. However, if the majority of export transactions are carried out in another stable currency, for example in U.S. dollars, the normal values may be stated in that currency. Information on the applicable prevailing rate of exchange can be found in the [Currency Exchange for Customs Valuation Regulations](#).

28. A ministerial specification is used to determine values for exporters who participate in a re-investigation or normal value review but have not provided sufficient information or have not provided information in time to enable determination of values. A ministerial specification is also used to determine values for new products and new exporters that enter the Canadian market after the completion of a re-investigation or normal value review. The notice of conclusion published on the CBSA [Re-investigation](#) or [Normal Value Review](#) webpage indicates how the values will be determined in accordance with the applicable ministerial specification.

Retroactive Assessment of Duties

29. Exporters with normal values are required to promptly inform the CBSA in writing of changes to domestic prices, costs, market conditions or terms of sale associated with the production and sales of the goods. All parties are cautioned that where there are increases in domestic prices and/or costs as noted above, the export price for sales to Canada should be increased accordingly to ensure that any sale made to Canada is not only above the normal value but at or above selling prices and full costs and profit of the goods in the exporter's domestic market. If exporters did not properly notify the CBSA of any such changes, did not adjust export prices accordingly, or did not provide the information required to make any necessary adjustments to normal values and export prices, retroactive assessments of anti-dumping duties may be warranted. Exporters can provide this information to the CBSA using the "Making Representations" process outlined in paragraphs 8-11 in this Memorandum.

30. When the CBSA conducts a re-investigation or normal value review, it will also do an analysis to determine whether retroactive duties should be assessed for past importations considering the following factors:

- whether there were changes in market conditions, prices, costs and terms of sale that could reasonably be expected to have a significant impact on an exporter's normal values;
- whether the exporter's domestic selling prices or costs of production increased during the period under consideration;
- whether the exporter increased its export prices to Canada to take into account cost and price increases and whether this was done in a timely manner;
- the difference between the new normal value and the actual export price of the goods; and
- any other factors deemed relevant by the CBSA.

31. Where the CBSA's analysis determines that changes to market conditions caused normal values to become significantly outdated and that the exporter failed to price up its exports in a timely manner, the CBSA may issue retroactive assessments to the exporter's Canadian importers. This is based on the revised normal value compared to the actual export price. In determining what constitutes significantly outdated, the CBSA will conduct a contextual analysis, which will give due regard to the market conditions of a particular good.

32. Retroactive duty assessments can be made for importations occurring from the start of the period of investigation covered by the re-investigation or normal value review until the conclusion of the re-investigation or normal value review.

Additional Information

33. 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	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	4205-13
Legislative References	<i>Special Import Measures Act</i>
Other References	D14-1-2, D14-1-3
Superseded Memorandum D	D14-1-8 dated September 8, 2015

