

Memorandum D14-1-3: Re-determinations and Appeals under the Special Measures Import Act

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Plain language summary

Target audience: Importers of commercial goods; governments of Canada-United States-Mexico Agreement (CUSMA) countries

Key content: How and when to request a re-determination of anti-dumping and/or countervailing duties (that is, duties meant to prevent unfairly traded imports from causing injury to Canadian industry); what can be re-determined; who can make a request; how and when to appeal a re-determination.

Keywords: CARM, imported goods, anti-dumping, countervailing, re-determination of duties, appeals, scope rulings

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Updates made to this D-memo

This memorandum has been revised to reflect the adoption of the Canada Border Services Agency (CBSA) Assessment and Revenue Management (CARM) as the official system of record for the collection of duties and taxes, including the necessity of an exporter identification number (ID).

Guidelines

1. After an assessment of anti-dumping and/or countervailing duties has been made, the [Special Import Measures Act](#) (SIMA) provides for several levels of re-determinations and appeals. Re-determinations can be made by a designated officer or the President of the CBSA (the president). The president's re-determination may be further appealed to the Canadian International Trade Tribunal (the tribunal), or to a binational panel in the case of goods of a Canada-United States-Mexico Agreement (CUSMA) country.

Filing a request for re-determination with the CBSA

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, which are made in accordance with section 55 of SIMA, 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:

- the normal value
- the export price
- the amount of subsidy
- the amount of the export subsidy, or
- 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 via the CBSA Accounting and Revenue Management (CARM) Client Portal (CCP) as a SIMA re-determination. An importer may submit a request to the CBSA only if all duties owing on the goods have been paid. The CCP will reject requests when importers have not paid the duties for the goods at issue. To submit a request, a commercial importer requires their own business number (BN) with an import-export program (RM) account. The BN used on all release and accounting documents must correspond with the BN under which the importer files a request for re-determination.

7. In the case of goods of a CUSMA country, the government of that CUSMA country or the producer, manufacturer or exporter of the goods, if they are of that CUSMA 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. Goods are considered to be accounted for under SIMA on the same date on which they are considered to be accounted for under the [Customs Act](#), which is reported on the original commercial accounting declaration (CAD) as the payment due date. The designated officer's decision will occur or be deemed to occur no later than 30 days after this payment due date.

9. A request for re-determination must be filed within 90 days of the designated officer's decision. If the 90th 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 is considered to be the date that the request is made.

How to file a request for re-determination

11. A request for a SIMA re-determination must be submitted via the CCP for every transaction with respect to the goods that are the subject of the request for re-determination. Requests for re-determination of SIMA anti-dumping or countervailing duties, and the requirement that such requests must be reviewed by a SIMA compliance or recourse officer, is not superseded by any other program or process.

12. Importers must submit the following information (as attachments to the request):

- a statement setting out the grounds on which the determination or re-determination is contested
- a statement setting out the facts on which the request for re-determination is based, and
- evidence in support of the facts referred to directly above

13. The importer should also include contact information such as the phone number and/or email address and the name of the appropriate company official to contact.

14. The facts on which the request for re-determination is based, along with the documentation submitted as evidence, should indicate:

- the original CAD number and line on the CAD that requires a change
- the fields that should be corrected and the values they should include
- the customs invoice or a commercial invoice (which meets the [CBSA's invoice requirements](#))
- the cargo control document
- the bill of lading
- and any required certificate and/or permits

15. Other documents may facilitate an expeditious resolution of the request, for example, a detailed cover letter and worksheet that clearly indicates what specific changes are being requested, 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 importer should be prepared to submit samples of the imported product upon request by a CBSA Officer, product literature/specifications, certificates of specification, and purchase documents describing the goods in detail. In all cases, a copy of the statement of account or other documentation which verifies the payment of duties will facilitate verification that the duties have been paid.

16. For further information on completing the request for re-determination, please refer to [Memorandum D17-2-1: Adjusting Commercial Accounting Declarations](#). Also, please refer to the [Guide for self-](#)

[assessing Special Measures Import Act duties](#) for more information on the SIMA codes and their interpretations. Further, to ensure the correct calculations of any SIMA duties payable or refundable, importers are required to input an appropriate SIMA invoice price. Importers are advised to select the appropriate SIMA-related reason code via the CCP when submitting a request for re-determination of SIMA anti-dumping or countervailing duties.

Goods of a Canada-United States-Mexico Agreement (CUSMA) country

17. The prescribed form for making a request for re-determination by appellants from a CUSMA country is also a request for SIMA re-determination via the CCP.

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

- CAD transaction number
- importer—BN, name, address and contact information
- name and address of the appellant from a CUSMA country, and
- the justification and explanation for the request for re-determination.

19. The appellants from a CUSMA country must submit the following information (as attachments to the request):

- a statement setting out the grounds on which the determination or re-determination is contested
- a statement setting out the facts on which the request for re-determination is based, and
- evidence in support of the facts referred to directly above

20. Completion of the remaining fields is optional for appellants from a CUSMA country. Where the appellant from a CUSMA country has access to the information required for proper completion of the remaining fields, completing them may facilitate the processing of the request. Finally, the reason code should indicate the authority possessed by appellants from a CUSMA country rather than a Canadian importer.

Multiple requests

21. An importer may submit a single request for SIMA re-determination applicable to multiple CADs at the same time, and the same designated officer or president's decision is issued with respect to each transaction included in the request.

22. Where a 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 request.

23. In addition to the requirements outlined in the section [How to file a request for re-determination](#) above, the following information or conditions apply:

- each request for re-determination of more than one CAD must pertain to goods subject to only one SIMA measure in force at a time
- a request cannot cover any transaction for which appeal rights have expired
- each transaction covered by the request must pertain to the same issue or grounds being contested and all the transactions must concern shipments of goods to the same importer, and
- all requests pertaining to multiple CADs must be supported by an attached electronic copy of a detailed worksheet including a listing of original transaction numbers in chronological order by date of final accounting, grouped by month, with subtotals for each month

How to submit the request

24. Requests for re-determination are to be submitted as requests for SIMA re-determination via the CCP. For more information on how to use the CCP or submit a request for SIMA re-determination, please refer to [Memorandum D17-1-5: Accounting for Commercial Goods](#) and [Memorandum D17-2-1: Adjusting Commercial Accounting Declarations](#).

When a request for re-determination is submitted

25. 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.

26. 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.

27. Cooperative exporters of goods subject to one or more SIMA measures in force are required to obtain an exporter ID, comprised of a business number and program account (BN15) generated by the Canada Revenue Agency. Once exporter IDs are obtained and submitted to the CBSA, they will be published on the CBSA's Measures in force webpage. An exporter ID is required to give effect to specific normal values, new model rates, export price deductions or amounts of subsidy. Importers should consult the "Information required on customs documents" section on the applicable Measures in force webpage for specific information required for each SIMA measure.

28. If a re-determination results in additional duty owing, the CBSA issues a statement of adjustment. 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 original payment due date) and ending on the date of the statement of adjustment. Failure to pay the total amount shown on the statement of adjustment within 30 days of the date of decision will result in additional interest charges issued under the *Customs Act*.

29. If a re-determination results in a refund of all or part of the duty paid, the CBSA issues a statement of adjustment 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 statement of adjustment was issued. This amount will not include any interest paid by the importer as a result of a late payment.

30. The amount of interest either collected or paid by the CBSA is shown on the statement of adjustment. The specified and prescribed interest rates are calculated quarterly and can be found in the [Customs interest calculation program](#) tool.

Late submission of a request

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

32. An exception may be made where, based on the information that was 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 importer should file a late request for re-determination. As indicated below, the CBSA may make a re-determination of the earlier determination under the two-year discretionary provision.

33. In order to ensure that the CBSA has sufficient time to consider such late requests, it is important that these requests be filed as soon as possible after the 90-day time limit and well in advance of the CBSA's two-year time limit for making a discretionary re-determination.

CBSA re-determinations 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 may use the two-year discretionary provision where:

- the self-assessment was based on incorrect information used by the importer or customs broker
- the goods are obviously not subject to the tribunal's finding on the basis of the definition of "subject goods," or
- 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

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. Voluntary amendments, and any required payments, can also be submitted via a request for SIMA re-determination.

Applying a scope ruling

39. An importer may request that the CBSA apply a scope ruling to a previous determination or re-determination. Similar to a re-determination mentioned above, separate requests must be made for transactions with respect to the goods that are the subject of the request.

40. In the case of goods of a CUSMA country, the government of that CUSMA country or the producer, manufacturer or exporter of the goods, if they are of that CUSMA country, may file a request. These requests will be reviewed whether or not the importer has paid the duties owing on the goods.

41. When requesting the application of a scope ruling, parties must submit the following information (as attachments to the request):

- a statement that identifies which scope ruling is applicable
- arguments to support the requester's position that the scope ruling is applicable, along with a statement of facts in support of those arguments, and
- evidence in support of those arguments and facts referred to in the bullet point above

42. As in a re-determination mentioned above, there are two levels of review for applying a scope ruling. Under subsection 70(2) or (4), a designated officer may apply a scope ruling to a determination or deemed determination made under section 56 of SIMA. Under subsection 70(1), (3), or (5) of SIMA, the president may apply a scope ruling to a determination or re-determination made under section 55, 57, or 59 of SIMA. These re-determinations may be made as the result of a request or if the designated officer or president deems it advisable.

43. A request under subsections 70(1) to (3) of SIMA only covers the application of the relevant scope ruling. A request under these subsections is not intended to elicit new normal values, export prices, or amounts of subsidy for the goods.

44. A scope ruling applied by a designated officer is deemed to be a re-determination under section 57 of SIMA and a scope ruling applied by the president is deemed to be a re-determination under subsection 59(1) of SIMA.

45. A request to apply a scope ruling must be filed within 90 days of the effective date of the scope ruling and the original section 55 or section 56 determination must have been made no more than two years before the effective date of the scope ruling.

46. If the ninetieth day after the effective scope ruling date falls on a Saturday, Sunday or holiday, the final day for making a request will be the next business day. The date of receipt of a request, or the date of the registered postmark when delivered by registered mail, is considered to be the date that the request is made.

47. The designated officer or president may apply a scope ruling to a determination or re-determination made under section 55, 56, 57 or paragraph 59(1)(a) or (e) if they deem it advisable within two years of that decision. However, if the decision occurred more than two years ago, but occurred within the two years preceding the scope ruling, a designated officer or the president may apply a scope ruling to that decision up to 90 days after the scope ruling. This means that a scope ruling could be applied to a determination or re-determination up to two years and 90 days after that decision.

Applying an anti-circumvention decision

48. Where the CBSA has made a decision, pursuant to subsection 75.1(1), as to whether the importation of some or all of the goods under an anti-circumvention investigation constitutes circumvention, under section 75.3, the Canadian International Trade Tribunal (the tribunal) will amend the order or finding in the manner described in the CBSA's decision.

49. Duties will be applied to goods of the same description to those of the anti-circumvention decision that are released the day after the tribunal has amended an order or finding. Additionally, duties will also be applied retroactively to goods released on or after the day on which an anti-circumvention investigation is initiated and up to the day on which the tribunal amends its finding. This retroactive assessment will be conducted by a designated officer pursuant to section 55.1 of SIMA.

50. The designated officer determination is made within 6 months of the tribunal's order to amend its finding and is deemed to be a re-determination made by a designated officer under paragraph 57(b) of SIMA. As normal values, export prices and/or amounts for subsidy are not calculated during the anti-circumvention investigation, the values used for the application of duty in this deemed decision will initially be determined in accordance with the methodologies set out in the applicable ministerial specification. New specific normal values and amounts for subsidy could be obtained during a future re-determination, reinvestigation or expedited review.

51. The normal values, export price and amount for subsidy applied in the deemed re-determination under 57(b) can be further re-determined by the president under request under subsection 58(1.1) or when the president deemed it advisable under section 59.

52. The anti-circumvention decision made by the president pursuant to subsection 75.1(1) is not subject to re-determination and may only be appealed through judicial review in accordance with paragraph 96.1(c.2)

Filing an appeal of a president's re-determination

53. After the president makes a re-determination under section 59 of SIMA, including a decision under subsections 70(1), (3), or (5), which is deemed to be a re-determination made under section 59, a person who deems himself aggrieved may appeal the re-determination to the Canadian International Trade Tribunal under section 61 of SIMA.

54. 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. For additional information on the tribunal's procedures, please consult the tribunal's [customs and excise appeals guide](#).

55. 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.

56. 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 may file an appeal under section 61 within the required time limits.

Filing an appeal of a president's re-determination for goods from a CUSMA country

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

- a request for a review by a binational panel in accordance with Article 10.12 of the CUSMA, or
- an appeal to the tribunal

58. Any person aggrieved by a president's re-determination respecting goods of a CUSMA 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

59. 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 CUSMA 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, CUSMA Secretariat.

60. The government of the CUSMA country, the importer, the manufacturer, the producer or the exporter may file a request for a binational panel review, no later than 30 days after the day on which the re-determination is received by the government of the CUSMA country.

61. On receipt of a request for a binational panel review, the Canadian secretary is required to notify the appropriate CUSMA 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 CUSMA Article 10.12 Binational Panel Rules. Additional information on the panel process may be obtained from the Canadian secretary.

62. Persons interested should note that where another party requests a binational panel review within the 30-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 CUSMA Secretariat, in accordance with the CUSMA Article 10.12 Binational Panel Rules.

Appeal to the Canadian International Trade Tribunal

63. A re-determination by the president, made under section 59 of SIMA, on goods of a CUSMA 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-CUSMA 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 CUSMA country to the tribunal.

- 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 CUSMA countries. These procedures are outlined in section 36.04 of the [Special Import Measures Regulations](#) and subrule 38(1)(a) of the CUSMA Article 10.12 Binational 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 after the day on which the notice of the re-determination is received by the government of the CUSMA country.

- A binational panel review must not have been requested and the 30-day limitation period for requesting such a review has expired.

64. If these conditions are met, a person may file a notice of appeal in writing with both the CBSA and the tribunal within 90 days after the date of the re-determination in question.

References

Consult these resources for further information.

Applicable legislation

- [Special Import Measures Act](#), sections 55, 56 to 61, 70, 75.1, 75.3, 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
- [Interest Rate for Customs Purposes Regulations](#)

Related D memoranda

- [Memorandum D14-1-7: Assessment and Payment of Duties are Required Under the Special Import Measures Act \(SIMA\)](#)
- [Memorandum D17-2-1: Adjusting Commercial Accounting Declarations](#)

Superseded D memoranda

D14-1-3 dated December, 2023

Issuing office

SIMA Investigations Division
Trade and Anti-dumping Programs Directorate
Commercial and Trade Branch

Contact us

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