



Ottawa, December 19, 2008

# MEMORANDUM D14-1-6

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## **In Brief**

### **LIABILITY AND PAYMENT OF PROVISIONAL DUTY, ANTI-DUMPING DUTY, AND COUNTERVAILING DUTY UNDER THE *SPECIAL IMPORT MEASURES ACT***

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# MEMORANDUM D14-1-6

## **LIABILITY AND PAYMENT OF PROVISIONAL DUTY, ANTI-DUMPING DUTY, AND COUNTERVAILING DUTY UNDER THE SPECIAL IMPORT MEASURES ACT**

This memorandum explains the liability and payment of provisional duty, anti-dumping duty, and countervailing duty on imported goods subject to the provisions of the *Special Import Measures Act* (SIMA).

### **GUIDELINES AND GENERAL INFORMATION**

#### **Liability of Provisional Duty**

1. Provisional duty is the amount equal to the estimated margin of dumping or the estimated amount of subsidy on the goods being imported. Anti-dumping duty is the margin of dumping, that is, the amount that the normal value exceeds the export price. Countervailing duty is the amount of subsidy on the goods.

2. The liability for payment of provisional duty commences on the date of a preliminary determination of dumping or subsidizing and ends on the earlier of the date that the President of the Canada Border Services Agency (CBSA) terminates the investigation, or on the date that the Canadian International Trade Tribunal (Tribunal) makes an order or finding regarding injury to the Canadian industry. The Tribunal is required to make an order or finding on the question of injury within 120 days from the date of receipt of the notice of the preliminary determination of the dumping or subsidizing. For greater certainty, provisional duty is assessed on goods released on the day of the Tribunal's decision.

3. A liability for payment of provisional duty also arises where a Tribunal finding of no injury has been reviewed by a binational dispute settlement panel (panel) and the panel has referred the matter back to the Tribunal for reconsideration. Where the panel refers the matter back, provisional duty is re-imposed retroactive to the date of the preliminary determination of dumping or subsidizing. The liability for payment of provisional duty ends on the day the Tribunal confirms its original finding, or rescinds it and makes a new finding.

4. In addition, a liability for payment of provisional duty arises where a Tribunal finding of no injury has been set aside by the Federal Court of Appeal and referred back to the Tribunal for reconsideration. In such circumstances, provisional duty is re-imposed as described in paragraph 3.

#### **Liability for Payment of Anti-Dumping or Countervailing Duty**

5. Goods that are subject to anti-dumping or countervailing duty are those goods of the same description as the products named in the Tribunal's order or finding of injury. The liability for payment commences on goods released from customs on the day after the date of the Tribunal finding and remains until the finding of injury is altered or rescinded.

6. A liability for payment of anti-dumping or countervailing duty also arises where a panel has reviewed a decision by the Tribunal to rescind an injury finding, and a panel has referred the rescinding order back to the Tribunal for reconsideration. The liability for payment of anti-dumping or countervailing duty recommences on the day the order of the panel referring the rescinding order back to the Tribunal is made, and remains unless the Tribunal, on reconsideration, confirms its rescinding order or makes a new rescinding order.

7. Where, on reconsideration of its rescinding order following a referral back by a panel, the Tribunal changes its decision to rescind the finding and makes a new order continuing the original injury finding in force, with or without amendment, the new order takes effect from the date of the original rescinding order. In these circumstances, anti-dumping or countervailing duty becomes payable retroactively on goods described in the new order that were imported in the period commencing on the date that the Tribunal rescinded the original injury finding and ending on the date that a panel referred the matter back to the Tribunal.

#### **Payment of Duty**

8. The importer becomes immediately liable for payment of provisional duty, anti-dumping duty, or countervailing duty upon the importation of goods subject to such duty. For methods of payment of provisional duty, see Memorandum D14-1-5.

9. Where goods, subject to an injury finding of the Tribunal are released during an expedited review, the importer must post security in the form of cash, cheque, or bond to cover the assessment of anti-dumping or countervailing duty. (An expedited review is a review conducted promptly for a new exporter, where 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 or countervailing duty.

10. Where no liability for provisional duty, anti-dumping duty, or countervailing duty existed at the time of importation of the goods, but such duties become retroactively payable as a consequence of review proceedings before a panel or the Federal Court of Appeal, the importer becomes liable for such duties retroactively when such duty is demanded by the President.

11. The payment of anti-dumping or countervailing duty is due regardless of any intention by the importer to request a re-determination in respect of the description of the goods, normal value, export price, or the amount of subsidy.

12. For goods of a NAFTA country, such payment shall be made regardless of any intention to request such a re-determination by the importer, the government of that NAFTA country, or the producer, manufacturer, or exporter of the goods, if they are of that NAFTA country.

13. Where provisional duty has been assessed, final assessments are made by designated officers in the Anti-dumping and Countervailing Program in Ottawa. The final assessment cannot exceed the amount of provisional duty paid or payable. Where the final assessment of anti-dumping or countervailing duty is less than the provisional duty collected, the overpayment will be promptly refunded.

14. Provisional duty paid will be refunded, or security posted will be returned, where either the President terminates the investigation or the Tribunal finds that:

- (a) there was no injury or threat of injury caused by the dumping or subsidizing; or
- (b) injury would be caused only by future importations of dumped or subsidized goods.

15. It should be noted that the Tribunal may find that the injury would have been caused during the provisional period except for the fact that provisional duties were imposed. In this type of finding, the anti-dumping or countervailing duties may be assessed on the goods released during the provisional period.

16. Provisional duty paid will be refunded, or security posted will be returned when, on reconsideration of its original finding of no injury following a remand of that decision by a panel or the Federal Court of Appeal, the Tribunal:

- (a) confirms that there was no injury or threat of injury; or
- (b) finds that injury would have been caused only by future importations of the dumped or subsidized goods.

17. Further information with respect to refunds of provisional duty or the return of bonds may be found in Memorandum D14-1-5.

18. For goods released from customs subsequent to an injury finding, the assessment of anti-dumping duty is made using the most recently calculated normal values. The

assessment of countervailing duty after an injury finding by the Tribunal is made using the most recently calculated amount of subsidy. Memorandum D14-1-7, *Assessment of Anti-Dumping and Countervailing Duties Under the Special Import Measures Act*, contains additional information on the assessment of anti-dumping and countervailing duties. Memorandum D14-1-8, *Re-Investigation Policy Under the Special Import Measures Act*, provides an explanation of the re-investigation policy on normal values, export prices, and amounts of subsidy.

19. Where the Tribunal, on reconsideration, confirms its original rescinding order, any anti-dumping or countervailing duty paid will be refunded. Where the Tribunal rescinds its original rescinding order and makes a new order or finding, any duties collected from the date the matter was referred back to the Tribunal that are not payable as a result of the new order or finding will be promptly refunded.

20. Any person who fails to pay anti-dumping or countervailing duty within 30 days of the demand for payment will be required to pay, in addition to the amount owing, interest on the amount outstanding. For additional information on the calculation of interest, refer to Memorandum D17-1-19, *Interest Rate for Customs Purposes Regulations*.

21. Where goods have been accounted for, and a customs officer determines within 30 days that the proper amount of anti-dumping duty or countervailing duty was not paid, the demand for payment is made 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. Such determinations are made pursuant to section 56 of SIMA.

22. 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 named in an injury finding of the Tribunal, within two years of the determination made pursuant to section 56 of SIMA.

23. Any person who fails to pay any amount owing as a result of a re-determination by a designated officer or the President must pay, in addition to the amount owing, interest on the outstanding amount.

### **Massive Importation of Injurious Dumped or Subsidized Goods**

24. Where the Tribunal finds that injury has been caused by massive importations of dumped or subsidized goods, the importer is liable for an additional anti-dumping or countervailing duty 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 or countervailing duty are made on the subject goods.

### **Review or Appeal Procedures**

25. The review procedures for assessments of anti-dumping or countervailing duty are contained in Memorandum D14-1-3, *Procedures for Making a Request for a Re-determination or an Appeal of Goods Under the Special Import Measures Act*.

**REFERENCES**

<p><b>ISSUING OFFICE –</b> Trade Programs Directorate</p>	<p><b>HEADQUARTERS FILE –</b> 4205-12-3</p>
<p><b>LEGISLATIVE REFERENCES –</b> <i>Special Import Measures Act</i>, sections 3 to 14 and 55 to 59</p>	<p><b>OTHER REFERENCES –</b> D14-1-3, D14-1-5, D14-1-7, D14-1-8, D17-1-19</p>
<p><b>SUPERSEDED MEMORANDA “D” –</b> D14-1-6, May 16, 2000</p>	

Services provided by the Canada Border Services Agency are available in both official languages.

