



Ottawa, October 1, 2008

MEMORANDUM D14-1-3

In Brief

PROCEDURES FOR MAKING A REQUEST FOR A RE-DETERMINATION OR AN APPEAL UNDER THE *SPECIAL IMPORT MEASURES ACT*

1. This memorandum is revised as a result of the Paper Burden Reduction Initiative. The revisions are aimed at eliminating obsolete and duplicated requirements, streamlining certain commercial processes and modifying complex policies and forms.
2. In accordance with the above, only one copy of the prescribed information and the B2 are required when submitting a request for re-determination under the *Special Import Measures Act*.



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PROCEDURES FOR MAKING A REQUEST FOR A RE-DETERMINATION OR AN APPEAL UNDER THE SPECIAL IMPORT MEASURES ACT

This memorandum explains the procedures to be followed by clients who disagree with the determinations and re-determinations concerning imported goods made under the *Special Import Measures Act* (SIMA) by the Canada Border Services Agency (CBSA). Anti-dumping and countervailing duties are referred to in this memorandum. The clients who may file a request are the importer or the importer’s agent. In the case of goods from a North American Free Trade Agreement (NAFTA) country, the government of that NAFTA country or the producer, manufacturer or exporter of the goods may file a request.

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GUIDELINES AND GENERAL INFORMATION

Terms

1. In this memorandum, we use the following terms to simplify the language:

“Act” refers to the *Special Import Measures Act*;

“duties” refers to anti-dumping duties or countervailing duties;

“importer” refers to the importer, the importer’s agent or counsel, or a NAFTA country appellant. These include the government of that NAFTA country; or, if the goods are of that NAFTA country, the producer, manufacturer or exporter of the goods;

“Regulations” refers to the *Special Import Measures Regulations*;

“request” refers to a request for a re-determination.

Legislative References

2. The following legislative sections cover requests for re-determinations:

(a) the *Special Import Measures Act*, sections 56 to 61 inclusive; and

(b) the *Special Import Measures Regulations*, sections 46 to 52 inclusive, and section 36.04 respecting goods of a NAFTA country.

3. You will find the legislative references covering requests for re-determination in the appendices to this memorandum. Regulatory changes will be proposed to the *Special Import Measures Regulations* (SIMR) to reflect changes made necessary by the creation of the CBSA, such as changes in the name of the organization, its mailroom, and its postal code. The SIMR sections covering requests for re-determinations found in Appendix B include the proposed regulatory changes and are being published to ensure a practical application of the SIMA. Meanwhile, the official legislative references in place will differ from those found in the appendices. You will find access to the complete official legislative references on the CBSA Web site at www.cbsa.gc.ca or on the Department of Justice Web site at <http://laws.justice.gc.ca>.

Provisional Duty

4. Provisional duty is based on estimates and is payable on dumped or subsidized goods that are of the same description as any goods to which a preliminary determination of dumping or subsidizing made by the CBSA in a dumping or subsidizing investigation applies. Provisional duty is assessed on goods released during the period that the Canadian International Trade Tribunal (Tribunal) is examining the question of injury to Canadian industry. The provisional duty applies during a period not exceeding 120 days, referred to as the provisional period. This period begins on the day the preliminary determination is made and ends on the earlier of the date on which the investigation is terminated by the President of the CBSA (President) with respect to goods of that description or the date on which the Tribunal makes an order or a finding with respect to goods of that description.

5. Provisional duty is an amount not greater than the margin of dumping of the imported goods, as estimated at the time of the preliminary determination of dumping, or the amount of subsidy on the imported goods, as estimated at the time of the preliminary determination of subsidizing. The estimated margin of dumping is the amount by which the estimated normal value of the goods exceeds the estimated export price of the goods.

6. The provisions of the *Customs Act* apply with respect to the payment, collection or refund of any duty collected under the SIMA. As a result, failure to pay provisional duty within the prescribed time will result in the requirement to pay, in addition to the amount, interest at the specified rate, calculated on the outstanding balance of the amount. As well, interest at the specified rate will apply to provisional duty payable where security has not been posted within the prescribed time.

7. Any provisional duty paid or security posted with respect to the importation of dumped or subsidized goods to which a preliminary determination of dumping or subsidizing applies, is returned to the importer immediately after the President of the CBSA terminates the dumping or subsidizing investigation with respect to goods of that description or the Tribunal terminates its inquiry on the question of injury regarding the dumping or the subsidizing of goods of that description. Provisional duty paid or security posted is also returned if the Tribunal makes a finding that the dumping or subsidizing of goods of that description has not caused injury to the Canadian industry or that the dumping or subsidizing of those goods only threatens to cause injury to Canadian industry.

8. A request for re-determination cannot be filed with respect to provisional duty. However, where the CBSA continues the investigation and makes a final determination of dumping or subsidizing with respect to those goods and the Tribunal finds that their being dumped or subsidized has

caused injury to the Canadian industry, the goods imported during the provisional period and the amount of duty owing or paid is reviewed. When making a finding of injury, the Tribunal may exclude certain products. For goods that were released during the provisional period, a designated officer has to determine, within six months of the date of the Tribunal finding or order, whether the goods are, in fact, goods of the same description as those described in the Tribunal finding or order, the normal value, export price or amount of subsidy on the goods so released. The amount of the anti-dumping or countervailing duty payable on the imported goods released during the provisional period cannot exceed the amount of provisional duty paid or payable on the goods.

9. If the designated officer determines that the amount of provisional duty paid or the security posted for this duty exceeds the amount of anti-dumping or countervailing duty payable, if any, on the goods, the excess amount is refunded, or security posted is returned to the importer.

10. The importer of the goods may, within 90 days after the date of the designated officer determination or re-determination, make a request to the President for a re-determination of the designated officer determination or re-determination, if the importer has paid all duties owing on the goods. The procedures for such a request are outlined below.

11. The Memorandum D14-1-5, and Memorandum D14-1-6, *Liability and Payment of Provisional Duty, Anti-dumping Duty and Countervailing Duty Under the Special Import Measures Act*, contain additional information on the liability, payment and refund of provisional duty, and on specific circumstances contemplated by the SIMA for such duty.

Anti-dumping and Countervailing Duty

12. 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 or countervailing duty. 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 imported goods.

13. In the course of an interim or expiry review, the Tribunal may rescind its finding or order or continue either with an amendment to exclude certain products, or without amendments.

14. Under the SIMA, a finding of injury or threat of injury or an order continuing a finding of injury or threat of injury and the associated special protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding or the order, unless an expiry review has been initiated.

15. A CBSA officer determines, within 30 days after the goods were accounted for, whether the imported goods are of the same description as goods to which the order or the finding of the Tribunal applies, the normal value or the amount of the subsidy on the imported goods of the same description, and the export price of those goods. Where, in the case of any imported goods, a determination is not made within the 30 days, that determination is deemed to have been made on the 30th 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.

16. A designated officer or the President of the CBSA may re-determine whether the imported goods are of the same description as goods to which the order or the finding of the Tribunal applies, the normal value and the export price or the amount of subsidy of the imported goods, within two years of the original determination.

17. 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. The procedures for such a request are outlined below.

18. The Memorandum D14-1-6, *Liability and Payment of Provisional Duty, Anti-dumping Duty and Countervailing Duty Under the Special Import Measures Act*, and the Memorandum D14-1-7, *Assessment of Anti-dumping and Countervailing Duties Under the Special Import Measures Act*, contain additional information on the liability, payment and refund of anti-dumping or countervailing duty, in specific circumstances contemplated by the SIMA for such duty and on the CBSA's enforcement of the Tribunal findings or orders.

PART I – PROCEDURES FOR FILING A REQUEST FOR A RE-DETERMINATION TO A DESIGNATED OFFICER OR THE PRESIDENT

What can be Reviewed

19. A request for a 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) the description of the goods in terms of whether they are the same as those described in the finding of the Tribunal or in the order of the Governor in Council.

Who can File a Request for a Re-determination

20. A request may be filed by the importer or the importer's agent. In the case of goods of a NAFTA country, the government of that NAFTA country or the producer,

manufacturer or exporter of the goods, when they are of a NAFTA country, may file a request.

Time Limits

21. The Act allows 90 days following a CBSA officer's decision or a designated officer's decision for an importer to request a re-determination. A request may be made only when 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.

22. In the case of a CBSA officer's or designated officer's decision respecting goods of a NAFTA country, the government of that NAFTA country or the producer, manufacturer or exporter of the goods, when they are of a NAFTA country, may also file a request for a re-determination within 90 days of the decision. These requests will be reviewed whether or not the importer has paid the duties owing on the goods.

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

24. The date of receipt of a request delivered by hand or regular mail to the Director General, Trade Programs Directorate, is considered to be the date that the request is made. When delivery is by registered mail, the registered postmark date indicates the request date.

25. Requests for re-determination are to be sent to:

Director General
Trade Programs Directorate
Canada Border Services Agency
C/O Manager, Compliance Unit
Anti-dumping and Countervailing Program
100 Metcalfe Street, 11th Floor
Ottawa ON K1A 0L8

Treatment of Late Requests for Re-determination

26. Any requests for a re-determination that are not filed in accordance with the instructions contained in this memorandum will be rejected. 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 under the two-year provisions, if the importer files a late request for re-determination or writes a letter explaining the situation.

27. The CBSA will also use the two-year discretionary provisions 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; or

(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.

Payment or Refund Requirements After a Determination or a Re-determination is Made

28. Where a request for a re-determination is filed properly, the CBSA will review the information, 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.

29. The provisions of the *Customs Act* apply with respect to the payment, collection or refund of any duty collected under the SIMA. Any person who is liable to pay an amount of duties with respect to imported goods must pay, in addition to the amount, interest beginning on the first day after the day the person became liable to pay the amount and ending the day the amount has been paid in full. For additional information on the calculation of interest, refer to Memorandum D17-1-19, *Interest Rate for Customs Purposes Regulations*.

30. If a determination or re-determination results in a demand for additional duty, the CBSA issues a form B2-1, *Canada Customs – Detailed Adjustment Statement (DAS)*. If the amount of additional duty payable under the SIMA is paid by the importer in Canada within 30 days after the day the determination or re-determination was made (referred to as the "decision day" or the date of the DAS), interest is not payable on the amount for the period beginning on the day after the date of the DAS and ending on the day the amount is paid. Failure to pay the additional duty within 30 days of the date of the DAS will result in the payment, in addition to the amount, of interest at the specified rate for the period beginning on the first day after the day the person became liable to pay the amount and ending on the day the amount has been paid in full, calculated on the outstanding balance of the amount.

31. If a determination or re-determination results in a refund of all or part of the duty paid in excess of the duties owed, 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 (other than interest that was paid because duties were not paid when required by subsection 32(5) or section 33 of the *Customs Act*).

32. If the interest amounts to less than \$10 per importation, it will neither be required to be paid by the importer nor will it be refunded by the CBSA.

33. Interest on amounts owing or returned is computed in accordance with the *Customs Act*. Interest on amounts owing is computed at the specified rate of interest. Interest on amounts returned is computed at the prescribed rate of interest. The amount of interest either collected or paid by the CBSA is shown on the adjustment documentation. Specified rate means the rate of interest, expressed as a percentage per year, equal to six percent per year plus the prescribed rate. See Memorandum D17-1-19, *Interest Rate for Customs Purposes Regulations*, for additional information on the calculation of the prescribed rate of interest. The prescribed and specified interest rates are calculated quarterly in accordance with applicable legislation. An interest rates table for customs purposes can be found on the CBSA Web site at www.cbsa.gc.ca.

Procedures for Filing a Request for a Re-determination

34. A separate request on form B2, *Canada Customs – Adjustment Request*, must be made for every transaction document with respect to the goods that are the subject of the request for re-determination. There is a blanket request procedure, which is outlined in paragraphs 50 to 55. Please note that the field 26 – SIMA CD of form B2 should be properly coded. The SIMA codes and their interpretations are provided in Appendix C. For further information on completing this form, refer to Memorandum D17-2-1, *Coding of Adjustment Request Forms*. As mentioned in Memorandum D17-2-1 and Memorandum D17-2-2, *Processing of Adjustment Request Forms*, adjustment requests filed to address issues on duties collected under the SIMA must be mailed directly to CBSA Headquarters (see the address in paragraph 25 above).

Importer's Procedures

35. The importer must complete and sign the form B2. The prescribed information required under Field No. 37 of the B2, is:

- (a) a statement setting out the grounds on which the 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.

36. It would assist officers if importers included the telephone number and name of the appropriate company official to contact under Field No. 37 of the B2.

37. The B2 and the prescribed information must be delivered or mailed in accordance with paragraphs 24 and 25 within 90 days of the date of the determination being appealed.

38. The final accounting document package should include, as 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, *Canada Customs Coding Form*, if available.

39. While the CBSA will consider any evidence that the importer may wish to submit, certain specific types of documents facilitate an expeditious resolution of the request, for example, the purchase order or sales contract, commercial invoice and letter of credit (as applicable). 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). In all cases, a copy of the DAS, showing the "duty paid" stamp, will facilitate verification that the duties have been paid.

Special Procedures Respecting Goods of a NAFTA Country

40. 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 by appellants from a NAFTA country when making a request:

- (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."

41. 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" (see paragraph 42(a) above)
- (d) field 37, "justification for request," "explanation," and "declaration."

42. 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.

43. As with procedures for importers noted in paragraph 35 the prescribed information must be delivered or mailed in accordance with paragraphs 24 and 25. The request must be

filed within 90 days of the date of the decision being contested (see paragraph 22 relating to time limits).

44. The prescribed information that must be submitted by appellants from a NAFTA country is:

- (a) a statement setting out the grounds on which the 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.

Voluntary Amendment/Payment

45. 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 a re-determination on the form B2.

46. 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.

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

48. Voluntary amendments or payments should be mailed or delivered to a CBSA office in the region where the goods were released.

49. On receiving the form B2 request, a designated officer or the President will review the specific circumstances and information relevant to the importation and may make a re-determination. Importers are reminded that re-determinations as a result of such requests may result in the assessment of additional duty.

Blanket Requests

50. A blanket request is a procedure through which an importer may request re-determinations on more than one transaction 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.

51. Written authorization must be obtained before submitting the form B2 covering the transactions. The importer must request authorization by writing to the Manager, Compliance Unit, at:

Anti-dumping and Countervailing Program
Trade Programs Directorate
Canada Border Services Agency
100 Metcalfe Street, 11th Floor
Ottawa ON K1A 0L8

52. This letter must contain an explanation of the issue that is being contested. It is the decision of the Compliance Unit Manager to authorize the blanket request.

53. In addition to the requirements for a request of a single importation outlined in paragraphs 35 to 44, the following information or conditions apply:

(a) the original letter of authorization may be used for all subsequent forms B2, provided that the issue to be considered is the same as the issue mentioned in the letter requesting the authorization;

(b) where a blanket request may result in administrative difficulties or processing delays, the Compliance Unit Manager may refuse the request or restrict the number of transactions to be included on the form B2;

(c) as the request for the re-determination for each transaction must be submitted within the time limits, a blanket request cannot cover any transaction for which appeal rights have expired;

(d) 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

(e) all blanket forms B2 must be supported by a 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.

54. Blanket requests will not be accepted in the regional offices. The prescribed information must be delivered by hand or mailed, in accordance with paragraphs 24 and 25. When a blanket request is not filed in this manner, it will not be considered by the CBSA.

55. An example of a form B2 blanket request and a related worksheet are presented in "Form B2 Coding Instructions and B2 Format Examples and Explanations," Appendix A to Memorandum D17-2-1, *Coding of Adjustment Request Forms*.

Other Information

56. For further details on the enforcement by the CBSA of a Tribunal finding of injury or threat of injury or of a Tribunal order continuing its finding of injury or threat of injury concerning a specific product, refer to the CBSA Web site at www.cbsa.gc.ca/sima.

PART II – PROCEDURES FOR FILING AN APPEAL OF A PRESIDENT’S RE-DETERMINATION WITH THE CANADIAN INTERNATIONAL TRADE TRIBUNAL UNDER SECTION 61 OF THE *SPECIAL IMPORT MEASURES ACT*

57. After the President makes a re-determination under section 59 of the Act, a person may appeal the re-determination to the Tribunal. Any person wishing to launch such an appeal must, within 90 days after the day on which the re-determination was made, file a notice of appeal in writing with both the:

President
Canada Border Services Agency
191 Laurier Avenue West
Ottawa ON K1A 0L8

and

Secretary
Canadian International Trade Tribunal
333 Laurier Avenue West
Ottawa ON K1A 0G7

58. Under subsection 61(2) of the Act, the Tribunal is required to publish notice of the hearing of an appeal in the *Canada Gazette* at least 21 days before the hearing. Any person who enters an appearance with the Secretary of the Tribunal before the hearing date will be allowed to make representations during the hearing.

59. For additional information on the Tribunal’s procedures, interested persons should contact the Secretary of the Tribunal at the address above. A decision of the Tribunal may be appealed to the Federal Court of Appeal under section 62 of the Act. 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.

60. Importers need not protect appeal time limits for their subsequent transaction of “like goods” to be eligible for consideration for review by the Tribunal. After the Tribunal has made a decision with respect to the goods, the President may, at any time after the Tribunal’s decision, 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 are advised to take protective action by contacting the CBSA for confirmation that the goods in question are considered to be subsequent goods, or by filing an appeal under section 61 within the required time limits.

**PART III – GOODS OF A NAFTA COUNTRY:
PROCEDURES FOR FILING AN APPEAL OF A
PRESIDENT’S RE-DETERMINATION WITH THE
CANADIAN INTERNATIONAL TRADE TRIBUNAL OR A
BINATIONAL PANEL**

61. The NAFTA requires certain decisions respecting goods of a NAFTA country to be reviewed by a binational panel. This includes President’s re-determinations under section 59 of the Act. Accordingly, the Act provides for two methods to dispute a section 59 re-determination respecting goods of a NAFTA country:

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

62. 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 the Canadian International Trade Tribunal Procedure

63. A re-determination by the President, made under section 59, on goods of a NAFTA country, may be appealed to the Tribunal, under section 61 of the Act. The procedure for such an appeal is basically the same as that for goods from a non-NAFTA country, as noted in Part II. However, several conditions must be met before a person may appeal a re-determination regarding goods of a NAFTA country to the Tribunal.

64. First, 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.

65. Second, an appeal to the Tribunal respecting goods of a NAFTA country may not be made during the 40-day period allowed for purposes of appealing the same decision to a binational panel. This limitation period expires 40 days after the date of the letter notifying of the re-determination. Additional information on notification procedures may be obtained by contacting the person identified in that letter.

66. If no request for a panel review is made by any party before the expiration of the 40-day period for requesting such a review, a person may file a notice of appeal in writing with both the President of the CBSA and the Secretary of the Tribunal (see the addresses in paragraph 59).

67. The notice of appeal must be filed with both the President and the Tribunal within 90 days after the date of the re-determination in question.

68. 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 a Binational Panel Procedure

69. Subsection 77.011(2) of the Act provides, among other things, that any person, who could appeal a President’s section 59 re-determination 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 at:

NAFTA Secretariat
Thomas D’Arcy McGee Building
90 Sparks Street, Suite 705
Ottawa ON K1P 5B4

70. 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.

71. 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.

72. The provisions of paragraph 62 also apply to an appeal to a binational panel.

APPENDIX A

Legislation – Relevant Provision
SPECIAL IMPORT MEASURES ACT

PART I – RE-DETERMINATIONS AND APPEALS**Re-determination by Designated Officer or President**

56. (1) **Determination final** – Where, subsequent to the making of an order or finding of the Tribunal or an order of the Governor in Council imposing a countervailing duty under section 7, any goods are imported into Canada, a determination by a customs officer

(a) as to whether the imported goods are goods of the same description as goods to which the order or finding of the Tribunal or the order of the Governor in Council applies,

(b) of the normal value of or the amount, if any, of the subsidy on any imported goods that are of the same description as goods to which the order or finding of the Tribunal or the order of the Governor in Council applies, and

(c) of the export price of or the amount, if any, of the export subsidy on any imported goods that are of the same description as goods to which the order or finding of the Tribunal applies,

made within thirty days after they were accounted for under subsection 32(1), (3) or (5) of the *Customs Act* is final and conclusive.

(1.01) **Request for re-determination** – Notwithstanding subsection (1),

(a) where a determination referred to in that subsection is made in respect of any goods, including goods of a NAFTA country, the importer of the goods may, within ninety days after the making of the determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to a designated officer for a re-determination, if the importer has paid all duties owing on the goods; and

(b) where a determination referred to in that subsection is made in respect of goods of a NAFTA country, the government of that NAFTA country or, if they are of that NAFTA country, the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer of the goods has paid all duties owing on the goods.

(1.02) **Suspension of s. (1.1)** – The operation of subsection (1.1) is suspended during the period in which subsection (1.01) is in force.

(1.1) **Request for re-determination** – Notwithstanding subsection (1),

(a) where a determination referred to in that subsection is made in respect of any goods, including goods of the United States, the importer of the goods may, within ninety days after the making of the determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to a designated officer for a re-determination, if the importer has paid all duties owing on the goods; and

(b) where a determination referred to in that subsection is made in respect of goods of the United States, the United States government or the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer of the goods has paid all duties owing on the goods.

(2) **Determination deemed to have been made** – Where, in the case of any imported goods referred to in subsection (1), a determination referred to in that subsection that is relevant in the case of those goods is not in fact made in respect of them within the thirty days referred to in that subsection, that determination shall be deemed to have been made

(a) on the thirtieth day after the goods were accounted for; and

(b) in accordance with any representations made by the person accounting for the goods at the time of the accounting.

57. **Review by designated officer** – Unless the President has previously re-determined under section 59 a determination referred to in subsection 56(1) or (2) or the determination was made in respect of goods released after the initiation of an expedited review under subsection 13.2(3) and before a decision was issued under that subsection, a designated officer may re-determine the determination

- (a) in accordance with a request made under subsection 56(1.01) or (1.1); or
- (b) if the designated officer deems it advisable, within two years after the determination.

58. (1) **Determination or re-determination final** – A determination or re-determination by a designated officer under section 55 or 57 with respect to any imported goods is final and conclusive.

(1.1) Request for re-determination – Notwithstanding subsection (1),

- (a) where a determination or re-determination referred to in that subsection is made in respect of any goods, including goods of a NAFTA country, the importer of the goods may, within ninety days after the date of the determination or re-determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to the President for a re-determination, if the importer has paid all duties owing on the goods; and
- (b) where a determination or re-determination referred to in that subsection is made in respect of goods of a NAFTA country, the government of that NAFTA country or, if they are of that NAFTA country, the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods.

(1.2) **Suspension of s. (2)** – The operation of subsection (2) is suspended during the period in which subsection (1.1) is in force.

(2) **Request for re-determination** – Notwithstanding subsection (1),

- (a) where a determination or re-determination referred to in that subsection is made in respect of any goods, including goods of the United States, the importer of the goods may, within ninety days after the date of the determination or re-determination, make a written request in the prescribed form and manner and accompanied by the prescribed information to the President for a re-determination, if the importer has paid all duties owing on the goods; and
- (b) where a determination or re-determination referred to in that subsection is made in respect of goods of the United States, the United States government or the producer, manufacturer or exporter of the goods may make a request as described in paragraph (a), whether or not the importer has paid all duties owing on the goods.

59. (1) **Permissive re-determination** – Subject to subsection (3), the President may re-determine any determination or re-determination referred to in section 55, 56 or 57 or made under this section in respect of any imported goods

- (a) in accordance with a request made pursuant to subsection 58(1.1) or (2);
- (b) at any time, if the importer or exporter has made any misrepresentation or committed a fraud in accounting for the goods under subsection 32(1), (3) or (5) of the *Customs Act* or in obtaining release of the goods;
- (c) at any time, if subsection 2(6) or section 26 or 28 applies or at any time becomes applicable in respect of the goods;
- (d) at any time, for the purpose of giving effect to a decision of the Tribunal, the Federal Court of Appeal or the Supreme Court of Canada with respect to the goods; and
- (e) in any case where the President deems it advisable, within two years after the determination referred to in section 55 or subsection 56(1), as the case may be, if the President has not previously made a re-determination with respect to the goods pursuant to any of paragraphs (a) to (d) or subsection (2) or (3).

(1.1) **Re-determination of re-determination** – The President may re-determine any re-determination

- (a) at any time after a re-determination was made under any of paragraphs (1)(a) to (c) and (e) but before an appeal under section 61 is heard, on the recommendation of the Attorney General of Canada, if the re-determination would reduce duties payable on the goods; and
- (b) at any time if the re-determination would be consistent with a decision of the Tribunal, the Federal Court of Appeal or the Supreme Court of Canada, or with a re-determination under paragraph (a), made in respect of other like goods of the same importer or owner imported on or before the date of importation of the goods in respect of which the re-determination is being made.

(2) **Permissive re-determination** – The President may re-determine any determination or re-determination referred to in section 55, 56 or 57 or made under this section in respect of any imported goods at any time for the purpose of giving effect to a decision of a panel under Part I.1 or II with respect to the goods.

(3) **Mandatory re-determination** – On a request made under subsection 58(1.1) or (2) to re-determine a determination under section 55 or a re-determination under section 57, the President shall

(a) in the case of a determination under section 55 or a re-determination under paragraph 57(b), re-determine the determination or re-determination within one year after the request under subsection 58(1.1) or (2) was made; and

(b) in the case of a re-determination under paragraph 57(a), re-determine the re-determination within one year after the request under subsection 56(1.01) or (1.1) was made.

(3.1) **Notice of re-determination** – The President shall cause notice of each re-determination under this section to be forwarded, by registered mail, to the importer and, where the imported goods are goods of a NAFTA country, to the government of that NAFTA country, to such persons as may be prescribed and, if the re-determination gives effect to a decision of a panel under Part I.1, to the Canadian Secretary.

(3.2) **Presumption** – A notice sent to the government of a NAFTA country pursuant to subsection (3.1) shall be deemed, for the purposes of this Act, to have been received by that government ten days after the day on which it was mailed.

(3.3) **Suspension of ss. (4) and (5)** – The operation of subsections (4) and (5) is suspended during the period in which subsections (3.1) and (3.2) are in force.

(4) **Notice of re-determination** – The President shall cause notice of each re-determination under this section to be forwarded, by registered mail, to the importer and, where the imported goods are goods of the United States, to the United States government, to such persons as may be prescribed and, if the re-determination gives effect to a decision of a panel under Part II, to the Canadian Secretary.

(5) **Presumption** – A notice sent to the United States government pursuant to subsection (4) shall be deemed, for the purposes of this Act, to have been received by that government ten days after the day on which it was mailed.

60. (1) **Effect of re-determination** – Where, in accordance with section 57 or 59, a re-determination as to whether any goods are goods described in paragraph 56(1)(a) or a re-determination of the normal value or export price of or the amount of subsidy or export subsidy on the goods has been made,

(a) the importer shall pay any additional duty payable with respect to the goods, or

(b) the whole or a part of any duty, or duty and interest paid (other than interest that was paid because duties were not paid when required by subsection 32(5) or section 33 of the *Customs Act*), in excess of the duties owing in respect of the goods shall be returned to the importer forthwith

if on the re-determination it is determined that the additional duty is payable or that the whole or the part of the duty paid was not payable, as the case may be.

(2) **Decision of President** – Notwithstanding subsection 25(2), any duties imposed, by virtue of this Act, on goods sold to an importer in Canada shall be included in the costs referred to in subparagraph 25(1)(c)(i) or (d)(v), as the case may be, where, in any re-determination referred to in subsection (1), the President is of the opinion that

(a) the goods were resold by the person referred to in paragraph 25(1)(c) who purchased the goods from the importer or by a subsequent purchaser at a price that is lower than the total of

(i) the price at which the seller acquired the goods, and

(ii) the administrative, selling and all other costs directly or indirectly attributable to the sale of the goods; and

(b) the export price, determined under section 24, of the goods is unreliable for a reason set out in subparagraph 25(1)(b)(ii).

60.1 **Notice to be given** – If a determination or a re-determination has been made under section 55, subsection 56(1) or section 57 or 59, notice of the determination or re-determination shall be given without delay to the importer in Canada.

Appeal to Canadian International Trade Tribunal

61. (1) **Appeal to the Tribunal** – Subject to section 77.012 or 77.12, a person who deems himself aggrieved by a re-determination of the President made pursuant to section 59 with respect to any goods may appeal therefrom to the Tribunal by filing a notice of appeal in writing with the President and the Secretary of the Tribunal within ninety days after the day on which the re-determination was made.

(2) **Publication of notice of appeal** – Notice of the hearing of an appeal under subsection (1) must be published in the *Canada Gazette* at least twenty-one days before the day of the hearing, and any person who enters an appearance with the Secretary at least seven days before the day of the hearing may be heard on the appeal.

(3) **Order or finding of the Tribunal** – On any appeal under subsection (1), the Tribunal may make such order or finding as the nature of the matter may require and, without limiting the generality of the foregoing, may declare what duty is payable or that no duty is payable on the goods with respect to which the appeal was taken, and an order, finding or declaration of the Tribunal is final and conclusive subject to further appeal as provided in section 62.

PART I.1 – DISPUTE SETTLEMENT RESPECTING GOODS OF A NAFTA COUNTRY

Interpretation

77.01 (1) **Definitions** – In this Part, [...]

“definitive decision” means [...]

(e) are-determination of the President under subsection 59(1),

(f) are-determination of the President under subsection 59(3),

(f.1) are-determination of the President under subsection 59(1.1), [...]

in so far as it applies to or is made in respect of particular goods of a NAFTA country, but does not include any such determination, re-determination, decision, order or finding that is made for the purpose of giving effect to a decision of the Federal Court of Appeal or the Supreme Court of Canada relating to those goods;

Request for review

77.011 (1) **Request for review of a definitive decision** – The Minister or the government of a NAFTA country, the goods of which are the subject of a definitive decision, may request, in accordance with paragraph 4 of Article 1904 of the North American Free Trade Agreement, that the definitive decision, in so far as it applies to goods of that NAFTA country, be reviewed by a panel.

(2) **Idem** – Any person who, but for section 77.012, would be entitled to apply under the Federal Courts Act or section 96.1 of this Act, or to appeal under section 61 of this Act, in respect of a definitive decision may, in accordance with paragraph 4 of Article 1904 of the North American Free Trade Agreement, file with the Canadian Secretary a request that the definitive decision be reviewed by a panel.

(3) **Deeming** – A request made under subsection (2) shall be deemed to be a request by the Minister for binational panel review within the meaning of paragraph 4 of Article 1904 of the North American Free Trade Agreement.

(4) **Limitation period** – A request under subsection (1) or (2) may only be made within thirty days after the day on which notice of the definitive decision is published in the *Canada Gazette* or, in the case of a re-determination of the President under subsection 59(1) or (3), within thirty days after the day on which notice of the re-determination is received by the government of a NAFTA country.

(5) **Grounds for request** – A request under subsection (1) or (2) for the review of a definitive decision may be made only on a ground set forth in subsection 18.1(4) of the Federal Courts Act.

(6) **Notification of request for review** – On receiving a request from the government of a NAFTA country under subsection (1) or on receiving a request under subsection (2), the Canadian Secretary shall notify the Minister and the appropriate NAFTA country Secretary of the request and the day on which it was received by the Canadian Secretary.

(7) **No application or appeal** – Where a request is made under subsection (1) or (2) for the review of a definitive decision by a panel, no person or government may apply under the Federal Courts Act or section 96.1 of this Act or appeal under section 61 of this Act in respect of the decision.

77.012 (1) **Applications and appeals** – No person or government may apply under the Federal Courts Act or section 96.1 of this Act or appeal under section 61 of this Act in respect of a definitive decision

(a) before the expiry of the period of thirty days after

(i) the day on which the definitive decision is published in the *Canada Gazette*, or

(ii) in the case of a re-determination of the President under subsection 59(1), (1.1) or (3), the day on which notice of the re-determination is received by the government of a NAFTA country; and

(b) unless the person or government has, within twenty days after the day on which that period commences, given notice of the intention to make such an application or appeal in writing to the Canadian Secretary and the appropriate NAFTA country Secretary and in the prescribed manner to any other person who, but for this section, would be entitled to so apply or appeal.

(2) **Limitation period extended** – For the purpose of permitting a government or person to apply under the Federal Courts Act or section 96.1 of this Act in respect of a definitive decision after the expiration of the limitation period established by paragraph 4 of Article 1904 of the North American Free Trade Agreement for requesting a review of the decision, the limitation period referred to in subsection 18.1(2) of the Federal Courts Act and subsection 96.1(3) of this Act is extended by ten days and shall be calculated as commencing on the day on which the limitation period established by that paragraph commences.

PART III – GENERAL

Application for review

96.1 (3) **Filing of application** – Subject to subsection 77.012(2), an application may be made under this section by any person directly affected by the determination, decision, order or finding by filing a notice of the application in the Federal Court of Appeal within thirty days after the time the determination, decision, order or finding was first communicated to that person by the President or the Tribunal, or within such further time as the Federal Court of Appeal or a judge thereof may, before or after the expiration of those thirty days, fix or allow

APPENDIX B

Regulations – Relevant Provisions
SPECIAL IMPORT MEASURES REGULATIONS

PART II.01 – DISPUTE SETTLEMENT RESPECTING GOODS OF A NAFTA COUNTRY

36.04 For the purposes of subsection 77.012(1) of the Act, notice of an intention to make an application or to appeal in respect of a definitive decision that is to be given to every person who, but for section 77.012 of the Act, would be entitled to make such an application or to appeal shall be given by publication in the *Canada Gazette* of a notice to that effect and, if that person is a person referred to in subrule 33(1)(a) of the NAFTA Article 1904 Panel Rules, by serving that person with a written notice in the manner set out in rule 25 of those Rules.

PART III – GENERAL**Re-determinations**

46. Where a manufacturer, producer or exporter of goods of the United States files a request for re-determination, the manufacturer, producer or exporter is hereby prescribed for the purposes of subsection 59(4) of the Act.

47. For the purposes of subsections 56(1.1) and 58(2) of the Act, a request for re-determination shall be delivered by hand or sent by registered mail to the Director General, Anti-dumping and Countervailing Program, Trade Programs Directorate, Canada Border Services Agency, Ottawa, Ontario K1A 0L8.

48. For the purposes of subsections 56(1.1) and 58(2) of the Act, the information to accompany a request for a re-determination shall be

- (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 paragraph (b); and
- (d) where the request for re-determination is made by the importer of the goods, a copy of
 - (i) the documentation used in accounting for the goods under subsection 32(1), (3) or (5) of the *Customs Act*, and
 - (ii) where the goods were released prior to accounting, the documentation used in making an interim accounting for the goods under subsection 32(2) of the *Customs Act*, if different from the documentation referred to in subparagraph (i).

49. For the purposes of subsections 56(1.1), 58(2) and 59(4) and (5) of the Act, the Department of State of the United States is the prescribed department of the United States government.

50. For the purposes of subsection 59(3.1) of the Act, a manufacturer, producer or exporter of goods of a NAFTA country who files a request for a re-determination is a prescribed person.

51. For the purposes of subsections 56(1.01) and 58(1.1) of the Act, a request for a re-determination shall be delivered by hand or sent by registered mail to the Director General, Anti-dumping and Countervailing Program, Trade Programs Directorate, Canada Border Services Agency, Ottawa, Ontario K1A 0L8.

52. For the purposes of subsections 56(1.01) and 58(1.1) of the Act, a request for a re-determination shall be accompanied by

- (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 paragraph (b); and
- (d) where the request for the re-determination is made by the importer of the goods, a copy of
 - (i) the documentation used in accounting for the goods under subsection 32(1), (3) or (5) of the *Customs Act*, and

(ii) where the goods were released prior to accounting, the documentation used in making an interim accounting for the goods under subsection 32(2) of the *Customs Act*, if that documentation is different from the documentation referred to in subparagraph (i).

APPENDIX C**INTERPRETATION OF THE SIMA CODES**

Identify the type of SIMA assessment applicable to the goods being imported as well as the payment mode in the following manner:

The first two digits will be the SIMA assessment type:

01. Goods are not subject to an anti-dumping duty, countervailing duty or provisional duty under the SIMA;
02. Goods are covered by an undertaking under the SIMA;
03. Goods are subject to a provisional duty under the SIMA;
04. Goods are of the same description as the goods named in a Canadian International Trade Tribunal order or finding of injury or threat of injury and are subject to an anti-dumping duty or countervailing duty; however, the assessment results in no amount of anti-dumping duty or countervailing duty being payable;
05. Goods are of the same description as the goods named in a Canadian International Trade Tribunal order or finding of injury or threat of injury: anti-dumping duty or countervailing duty is payable.

The third digit indicates a nil assessment or the payment mode:

0. Nil payment;
1. Cash;
2. Bond.

Form B2, Canada Customs – Adjustment Request**First Field No. 26 – As accounted for**

Transcribe the SIMA code found on the accounting document (this code should be 051).

Second Field No. 26 – As claimed

Identify the SIMA code that, in your opinion, would be applicable to the imported goods (this code could be 010, 040 or continue to be 051).

REFERENCES

<p>ISSUING OFFICE – Trade Programs Directorate</p>	<p>HEADQUARTERS FILE – 4205-12-3</p>
<p>LEGISLATIVE REFERENCES – <i>Special Import Measures Act</i>, sections 56 to 61, 77.01, 77.011, 77.012, 77.11, 77.12, and 96.1 <i>Special Import Measures Regulations</i>, sections 36.04, 46 to 52 <i>Federal Courts Act</i>, sections 18 and 28</p>	<p>OTHER REFERENCES – D14-1-5, D14-1-6, D17-1-19, D17-2-1, D17-2-2</p>
<p>SUPERSEDED MEMORANDA “D” – D14-1-3, August 10, 2005</p>	

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

