

Who Is The Exporter For Special Import Measures Act (SIMA) Purposes?

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It is an important question “**Who is the exporter for SIMA purposes?**” because exporters must complete exporter requests for information in SIMA anti-dumping/countervailing duty proceedings. The term “exporter” is not defined in the SIMA. As a result, we must turn to the case law.

An important case is [Emco Electric International – Electrical Resource International v. President of the Canada Border Services Agency \(AP-2008-010\)](#) decided by the Canadian International Trade Tribunal (“CITT”).

The CITT notes that “that the *Canadian Oxford Dictionary* defines the word “export” as follows: “...send out (goods, services, etc.) to another country, esp. for sale...”

The CITT also noted that in *Her Majesty The Queen v. The Singer Manufacturing Company, [1968] 1 Ex. C.R. 129*, the Exchequer Court of Canada considered the meaning of the term “exporter” for purposes of determining anti-dumping duty liability as follows:

“The words “exporter” and “importer” are not words of art in the law; they are words that gain the meaning that they have when used in a context such as that found here from the business or commercial world. It follows, therefore, in my view, that the matter must be approached from a business or commercial point of view...The essential feature in my view is that the exporter must be the person in the foreign country who sends the goods into Canada and the importer must be the person to whom they are sent in Canada...”

The CITT held that the identify of the exporter must be determined on a case by case basis based on the particular facts.

The CITT determined that possession and legal title to the goods are significant factors in determining the identity of the exporter. Documentary evidence concerning the commercial transactions that occurred for the two importations under consideration was necessary and relevant. Commercial documents were reviewed, such as the following were considered:

- commercial invoice;
- the bills of lading, which serve as a document of title to goods in transit;
- the certificates of origin;
- the invoices pertaining to the carriage of the goods in issue from the producer’s mill to Canada;
- the cargo transportation insurance policies and who was the insured party;

- the bank debit confirmations showing who paid for the goods;
- the Canada Customs coding forms and who is listed as the vendor of the goods;
- the invoices pertaining to logistics services relating to the entry of the goods in issue into Canada and their delivery from the Canadian port;
- the purchase orders for the goods in issue; and
- the invoices and packing lists for the goods in issue.

Based on the totality of the documentary evidence, the CITT agreed that the exporter was the person identified by Emco. The CITT recognized that:

“the goods in issue were largely effected through a series of paper-based transactions, a situation that is not uncommon in international commerce (as outlined above) and that the producer had knowledge that the goods in issue were being produced specifically for export to Canada.”

The CITT then stated:

“the Tribunal finds no indication in SIMA that the physical handling of goods is essential to being considered the exporter of those goods or that a foreign producer, solely by virtue of knowing that goods that it is producing are destined for a particular export market, necessarily becomes the exporter of those goods.”

This decision is helpful and may be used to argue that a particular party is the exporter. Sometimes the CBSA would like to treat a supplier to the exporter as the exporter – this case will be useful in such circumstances.

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