

## Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

# The CBSA Has Revised D-Memo 14-1-2 Relating to Disclosure of SIMA Duties

By Cyndee Todgham Cherniak on September 1st, 2015

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On August 27, 2015, the Canada Border Services Agency (“CBSA”) re-issued D-Memorandum D-14-1-2 “Disclosure of Normal Values, Export Prices, and Amounts of Subsidy Established Under the Special Import Measures Act”. The new D-Memo, which supercedes the previous version, is different.

The D-Memo primarily applies to importers who must pay applicable antidumping and/or countervailing duties on goods subject to an antidumping and/or subsidy Order. Often importers are not aware of the normal value calculated for the exporter from whom they purchased the subject goods. I like to call normal values calculated by the CBSA a “secret price list”.

While the subsidy rate (usually a monetary value per unit of measure) is publicly available on the CBSA web-site in the final determination or the conclusion if a reinvestigation, the normal values and export prices are not publicly available. The CBSA takes the position that normal values and export prices are confidential because they are established based on confidential information provided by exporters and importers. This means that importers can buy goods and face an unexpected assessment of antidumping duties by the CBSA if the amount paid to the seller is less than the normal value.

Canada is different from the United States and other countries. Canada collects antidumping and/or countervailing duties prior to the release of the goods and on a shipment-by-shipment basis. The United States tallies up the antidumping and countervailing duties payable after the importation has occurred and in respect of number of shipments.

New D-Memo 14-1-2 states, in part, as follows:

### Guidelines and General Information

1. Specific normal values and export prices are generally considered to be confidential and are not publicized or available to the general public. The amount of subsidy calculated for specific exporters who have cooperated in a dumping and/or subsidy investigation will normally be provided in the CBSA’s public decision documents, which are available on the CBSA Web site.

2. Importers should contact their respective exporters to obtain specific normal values, export prices and, if applicable, the amount of subsidy. However, this information may be released by the CBSA for purposes of:

**(a) Releasing goods or accounting for goods released**

CBSA officers may release normal values, export prices and amounts of subsidy to importers on a need-to-know basis, i.e. to obtain release of a shipment of goods or account for goods previously released.

**(b) Determining potential liability for provisional duty, anti-dumping duty and countervailing duty on goods in-transit**

CBSA officers may provide normal values, export prices and amounts of subsidy to an importer relative to goods, which the importer has purchased and which are in transit.

**(c) Determining potential liability for provisional duty, anti-dumping duty and countervailing duty on a possible importation**

CBSA officers may inform a potential importer whether or not quoted prices will incur provisional duty, anti-dumping duty or countervailing duty. Under no circumstances will a potential importer be given confidential normal values, export prices or the amounts of subsidy if no proof of price offer by the exporter is provided. The importer will only be informed whether or not the prices quoted will incur provisional, anti-dumping or countervailing duty.

3. Requests for normal values, export prices or amounts of subsidy and potential duty liabilities are to be made in writing and accompanied by a proof of purchase, proof that the goods are in-transit, or proof of the price offered by the exporter.

4. For certain goods, such as capital goods, the amount of anti-dumping duty or countervailing duty payable cannot be conclusively established prior to the entry of the goods. In such instances, the CBSA may require access to information relating to actual production costs, as well as other information relevant to determine the normal value, the export price, or the amount of subsidy not normally available or verifiable in advance of importation. Under certain circumstances, the CBSA may provide the exporter and importer with an estimate of the assessment, based on information provided in advance of actual production and shipment. The provision of such an estimate is not to be construed as limiting the CBSA in determining the actual assessment on the goods as provided for in the Special Import Measures Act. Please contact the Enforcement officer assigned to the case, as listed on the Measures in force Web page, for more information.

Previous D-Memo D-14-1-2 stated as follows: January 21, 2009 version

**GUIDELINES AND GENERAL INFORMATION**

1. The purpose of this policy is twofold:

(a) to provide for the release of normal values, export prices and amounts of subsidy to importers so that properly completed accounting documents may be presented to the Canada Border Services Agency (CBSA), while maintaining the confidentiality of commercial data supplied to the CBSA, and

(b) to facilitate responses to importer enquiries.

2. When applicable, the amount of subsidy by exporter will normally be provided in the CBSA's public decision documents, which are available on the CBSA Web site. In cases where the amount of subsidy is not publicly disclosed, the following applies.

3. There are three general reasons for an importer to request information relative to normal values, export prices, and amounts of subsidy. These are indicated below together with the specific policy applicable.

**Data Needed for Release or Accounting of Goods Released**

4. CBSA officers may release normal values, export prices and amounts of subsidy to importers on a need-to know basis, i.e. so the importer may obtain release of a shipment of goods or finally account for goods previously released.

**Data Needed to Determine Potential Liability for Provisional Duty, Anti-dumping Duty and Countervailing Duty on Goods In-Transit**

5. A CBSA officer may provide normal values, export prices and amounts of subsidy to an importer relative to goods, which the importer has purchased and which are in transit, providing the importer makes the request in writing and presents documentary evidence sufficient to satisfy the officer that the goods are indeed in transit.

**Data Needed to Determine Potential Liability for Provisional Duty, Anti-dumping Duty and Countervailing Duty on a Possible Importation**

6. A CBSA officer may inform a potential importer whether or not quoted prices will incur provisional duty, anti-dumping duty or countervailing duty. Where such an information request involves an exporter that has been provided specific normal values, the potential importer must make the request in writing and support the request with a copy of a price quotation from the exporter. Under no circumstances will a potential importer be given confidential normal values, export prices or the amounts of subsidy. The importer will only be informed whether or not the prices quoted will incur provisional duty, anti-dumping duty or countervailing duty.

7. Where a CBSA officer releases information according to the policy set out in this memorandum, normal values, export prices and amounts of subsidy are subject to change in accordance with sections 55, 56, 57 or 59 of the Special Import Measures Act and, should a review take place, accounting documents covering the goods imported may be amended accordingly. As a result of such a review, the CBSA may refund excess duties paid or request additional duties from the importer.

Tags: antidumping, antidumpnig duty, Canada Border Services Agency, CBSA, countervailing duty, export prices, normal values, subsidy

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