17 September 2019

Indirect Tax Alert

News from EY Americas Tax

Canada enhances trade remedy system by amending the *Special Import Measures Regulations*

Executive summary

On 4 September 2019, the Government of Canada published SOR/2019-314, *Regulations amending the Special Import Measures Regulations* in Part II of the *Canada Gazette*. The Government has amended the *Special Import Measures Regulations* (SIMR) to provide the Canada Border Services Agency (CBSA) with additional methods for calculating appropriate dumping margins in its anti-dumping investigations. The amendments are expected to afford the CBSA with more flexibility in determining production costs in transactions between associated parties and in particular market situations.

Detailed discussion

Background

Under the *Special Import Measures Act* (SIMA), Canadian domestic producers may request to have anti-dumping and countervailing duties imposed on imports following investigations by the CBSA to determine whether imports were dumped or subsidized and the Canadian International Trade Tribunal (CITT) to determine whether imports injure or threaten to injure Canadian producers.[1]

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Building a better working world

Due to continuing challenges in the global steel trade environment and persistent overcapacity in global steel production, Canadian steel producers have raised concerns over recent years that Canada's trade remedy system requires additional mechanisms to better address cases of dumped and unfairly subsidized goods being imported into the Canadian market and causing injury to Canadian producers.[2] Following consultations with industry stakeholders in spring 2019, the Government adopted recommendations received during those consultations by amending the SIMR to clarify certain elements related to the calculation of the costs of production in anti-dumping investigations.[3]

Amendments to the SIMR

Transactions between associated parties

The amendments made to the SIMR address the calculation of production costs in transactions between associated parties (such as a subsidiary or affiliated entity). In cases where an input used in the production of goods is acquired by the exporter or producer from an associated person and is a significant factor in the production of the goods, the cost of the input in the export will be considered by the CBSA to be the greater of the following amounts:

- The price paid in respect of the input by the exporter or producer to the associated person
- The cost incurred by the associated person in the production of the input, including the administrative, selling and all other costs with respect to the input
- The price in the country of export of the same or substantially the same inputs, if sufficient information is available to enable the price to be determined on the basis of:
  - The selling prices of those inputs in the country of export, in the same or substantially the same quantities, between parties who are not associated persons

    Or
  - The published prices of those inputs in the country of export[4]

Particular market situation

Prior to the amendment of the SIMR, the CBSA could, when determining production costs in an anti-dumping investigation, disregard sales in the domestic market of the exporting country if the sales were affected by a particular market situation. In such cases, the CBSA could use alternative methodologies when calculating dumping margins.[5] The amendments to the SIMR provide alternative options to determine the cost of inputs of goods imported into Canada when a particular market situation does not permit a proper comparison to be made between the sale of goods in the country of export and the sale of goods exported to Canada.[6] According to the amendments, the cost of input in the country of export shall be considered to be the *first* of the following amounts that reasonably reflects the actual cost of the input so as to permit a proper comparison:

- The price of the same or substantially the same inputs that are produced in the country of export and sold to the exporter or to other producers in the country of export
- The price of the same or substantially the same inputs that are produced in the country of export and sold from the country of export to a third country
- The price of the same or substantially the same inputs determined on the basis of the published prices of those inputs in the country of export
- The price of the same or substantially the same inputs that are produced in a third country and sold to the exporter or to other producers in the country of export, adjusted to reflect the differences relating to the price comparability between the third country and the country of export

  Or
- The price of the same or substantially the same inputs determined on the basis of the published prices outside the country of export, adjusted to reflect the differences relating to price comparability with the country of export[7]

Impact

The Canadian Government expects the amendments to SIMR will provide Canadian producers with access to mechanisms similar to those available to the producers of trading partners such as Australia, the European Union and the United States. The amendments to SIMR are expected to ensure that appropriate margins of dumping can be calculated by allowing the CBSA to take account of potential distortions due to transactions between associated parties and the effects of particular market situations when determining the costs of production in its anti-dumping investigations. This will ensure that Canada's trade remedy system can offer comparable levels of protection for domestic producers from the effects of unfair trade and maintain a fair and balanced approach to trade remedies in line with Canada's legal and trade obligations.[8]

Endnotes

1. Regulatory Impact Analysis Statement to SOR/2019-314.
2. Ibid.
3. Ibid.
4. SOR/2019-314, s. 5.
5. Regulatory Impact Analysis Statement to SOR/2019-314.
6. Ibid.
7. SOR/2019-314, s. 5.
8. Regulatory Impact Analysis Statement to SOR/2019-314.

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EYG no. 001182-19Gbl

1508-1600216 NY
ED None

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