

## **GUIDELINE**

### **INTERIM REVIEWS**

This guideline sets out the Tribunal's general approach to interim reviews.<sup>1</sup> The *Special Import Measures Act*<sup>2</sup> provides for the conduct of an interim review by the Tribunal of an order or finding. The Tribunal will commence an interim review where one is warranted and will determine if the order or finding (or any aspect of it) should be rescinded or continued, with or without amendment

### **GROUND FOR AN INTERIM REVIEW**

An interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a sufficient change in the circumstances that led to the order or finding. For example, since the order or finding, the domestic industry may have ceased production of like goods or foreign subsidies may have been terminated. An interim review may also be warranted where there are sufficient facts that, although in existence, were not put into evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time.

### **REQUEST FOR AN INTERIM REVIEW**

The Minister of Finance, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) or any other person or government may make a written request to the Tribunal for an interim review.

Persons and governments should endeavour to base the submissions in their requests exclusively on public information; however, confidential information relevant to the issues before the Tribunal may be filed, if necessary.

A request for an interim review should be addressed to the Secretary of the Tribunal and must include the information described in Appendix 1. In identifying the grounds for an interim review and the facts on which those grounds are based, the requester should include the information described in Appendix 2.

When the Tribunal receives a properly documented request for an interim review, it will send a copy of the public request to the parties to the inquiry or previous review, if any. Those parties will have 15 days to file replies to the request. The Tribunal will send a copy of the confidential request<sup>3</sup>, if any, to counsel who file a notice of representation and a declaration and undertaking with the Tribunal.<sup>4</sup>

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1. This guideline does not supplant the provisions of the *Special Import Measures Act* or those of any other relevant acts or regulations, such as the *Special Import Measures Regulations* and the *Canadian International Trade Tribunal Rules*. It is not a binding statement of how the Tribunal's discretion will be exercised in a particular situation, however, it is meant to provide guidance to both the Tribunal and its stakeholders when dealing with cases.
  2. Section 76.01.
  3. See the Tribunal's *Guidelines on the Treatment of Confidential Information* available at the Tribunal's Web site at [www.citt.gc.ca](http://www.citt.gc.ca).
  4. Forms for filing notices are available on the Tribunal's Web site at [www.citt.gc.ca](http://www.citt.gc.ca).

The Tribunal will send any public replies to the requester and to any other responding party, for their information only. The Tribunal will send a copy of any confidential replies to counsel who filed a notice of representation and a declaration and undertaking with the Tribunal. Where warranted, the Tribunal will consider accepting further submissions following the replies.

### **DECISION ON WHETHER TO COMMENCE AN INTERIM REVIEW**

Approximately 30 days following the receipt of a request for an interim review, based on the information submitted, the Tribunal will decide whether an interim review of the order or finding is warranted. If the Tribunal decides that an interim review is not warranted, it will make an order to that effect and publish it in the *Canada Gazette*. It will issue the reasons for its decision approximately 15 days following the decision. The Tribunal's decision and reasons will also be published on its Web site ([www.citt.gc.ca](http://www.citt.gc.ca)).

### **CONDUCT OF AN INTERIM REVIEW**

#### **Notice of Commencement of Interim Review**

If the Tribunal determines that an interim review is warranted, it will issue a notice of review setting out the information described in Appendix 3. The notice will be published in the *Canada Gazette* and will be sent to the Commissioner, all persons known by the Tribunal to be interested parties and the government of any country from which the goods were exported to Canada.

#### **Tribunal's Proceeding**

Once an interim review has been commenced, the Tribunal will conduct such proceedings as the nature of the issues warrants. Parties will be given the opportunity to make written submissions to the Tribunal. The Tribunal may make its decision solely on the basis of written submissions, or it may decide to proceed in a different manner. The proceeding may include the issuance of questionnaires and, if necessary, a public hearing to receive evidence and submissions from parties.

#### **Tribunal's Order**

On completion of the interim review, the Tribunal will:

- for the review of an entire order or finding, continue, amend or rescind it; or
- for the partial review of an order or finding, make any other order, as the circumstances require.

An interim review order which amends or continues the original order or finding expires either: (i) on the date that the original order or finding expires; or (ii) where an expiry review is commenced before that date, on the date on which the Tribunal makes its order in the expiry review. An interim review order that rescinds an order or finding does not expire.

### **OTHER MATTERS**

#### **Access to the Public Record**

Parties to an interim review will receive a copy of the public record of the proceeding from the

Tribunal. Others may have access to the public record of an interim review during normal business hours, on the premises of the Tribunal, after the deadline for receipt of submissions.

Copying of the public record, or any part of it, will be at the expense of the person requesting copies.

### **Access to the Protected Record of a Prior Related Tribunal Proceeding**

In addition to access to the protected record of the interim review, counsel may have access to the protected record of a prior related Tribunal proceeding.<sup>5</sup> In providing this access, the Tribunal has adopted the following practice:

- Persons or governments whose counsel require access must file with the Tribunal a notice of participation.
- Counsel must file with the Tribunal a notice of representation and a declaration and undertaking.
- A request for access must be made to the Secretary. Access to a protected record will only be permitted during normal business hours, on the premises of the Tribunal, or as otherwise specified by the Secretary.

### **Placing Information from a Prior Related Proceeding on the Record of the Interim Review**

The Tribunal will place the revised public and protected pre-hearing staff reports from the prior related inquiry or the most recent review, whichever is applicable, on the record of the interim review. In addition, the Tribunal will place an index of the evidence and documents from that proceeding on the record of the interim review. Parties who intend to use information from the record of a prior related proceeding may do so subject to the conditions listed in Appendix 4.

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5. As described in subsection 45(3) of the *Canadian International Trade Tribunal Act*.

**APPENDIX 1****REQUEST FOR COMMENCEMENT OF AN INTERIM REVIEW**

A request to the Tribunal for an interim review must include:<sup>6</sup>

1. the name, address for service, telephone number, fax number and electronic mail address of the requester and of the requester's counsel, as applicable;
2. the nature of the requester's interest in the order or finding;
3. the grounds on which the requester believes that an interim review is warranted and a statement of facts on which those grounds are based; and
4. the nature of the order that the requester believes that the Tribunal should make on completion of the interim review.

A request should be addressed to:

The Secretary  
Canadian International Trade Tribunal  
Standard Life Centre  
333 Laurier Avenue West  
15th Floor  
Ottawa, Ontario  
K1A 0G7

Telephone No.: (613) 993-3595  
Fax No.: (613) 990-2439

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6. See subrule 70(1) of the *Canadian International Trade Tribunal Rules* for the official wording of these regulatory provisions.

**APPENDIX 2****IDENTIFICATION OF THE GROUNDS FOR AN INTERIM REVIEW**

In identifying the grounds for an interim review, the requester should:

1. identify the sufficient new facts or changes in circumstances which have occurred since the order or finding and/or the sufficient facts that were not put in evidence during the previous review or inquiry and that were not discoverable by the exercise of reasonable diligence (collectively, the relevant circumstances);
2. identify the imported and domestic goods that the relevant circumstances affect or will affect;
3. identify any other changes in circumstances, domestically or internationally, including changes in the supply of or demand for the goods, and changes in trends in, and sources of, imports into Canada or in production in Canada; and
4. provide any other information that is relevant to the Tribunal's decision on whether to commence an interim review.

**APPENDIX 3****NOTICE OF COMMENCEMENT OF INTERIM REVIEW**

A notice of commencement of interim review contains:<sup>7</sup>

1. the statutory authority for the interim review;
2. the subject matter of the interim review and any other details that the Tribunal directs;
3. the date by which an interested party must file a notice of participation;
4. the date by which counsel for an interested party must file a notice of representation and, if appropriate, a declaration and undertaking with the Tribunal;
5. the date by which any written submissions must be filed;
6. the number of copies of each written submission that must be filed;
7. instructions with respect to the filing of confidential information;
8. the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the interim review may be obtained; and
9. the place and time fixed for the commencement of a hearing, if necessary, in the interim review.

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7. See subsection 71(1) of the *Canadian International Trade Tribunal Rules* for the official wording of these regulatory provisions.

## **APPENDIX 4**

### **USING INFORMATION FROM A PRIOR RELATED TRIBUNAL PROCEEDING**

The following conditions apply when parties use information from the record of a prior related Tribunal proceeding.

1. Any party filing, with its submissions to the Tribunal, documents, materials and information from the public record of a prior related proceeding must identify them as such and provide their source, including the proceeding in which they originated.
2. Any reference, in the submissions of a party, to information in the public record of a prior related proceeding, or to information derived therefrom, must be identified as such and include the specific source of the information and the proceeding in which it originated.
3. Any party wanting to use or refer to documents or materials contained in the public record of a prior related proceeding, that are not otherwise filed by or with the Tribunal in the interim review, shall advise the Tribunal and the other parties.
4. The Tribunal may request a party submitting or wanting to submit information from the public record of a prior related proceeding to seek leave of the Tribunal. This may occur where a party attempts to incorporate large portions of a prior proceeding into its submissions.
5. Any party wanting to use or refer to confidential documents or materials contained in the protected record of a prior related proceeding, that are not otherwise filed by or with the Tribunal in the interim review, shall make a request to the Tribunal to direct the Secretary to place such documents or materials on the record. Where the Tribunal is of the view that the information contained in such documents and materials warrants placing them on the record, the Tribunal will direct the Secretary to do so.