

## **GUIDELINE**

### **PRELIMINARY INJURY INQUIRIES**

This guideline sets out the Tribunal's general approach to preliminary injury inquiries.<sup>1</sup> Under the *Special Import Measures Act*,<sup>2</sup> the Tribunal is required to conduct a preliminary injury inquiry when it receives, from the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), a notice of initiation of an investigation respecting the dumping or subsidizing of any goods.

### **COMMENCEMENT OF A PRELIMINARY INJURY INQUIRY**

The Tribunal will publish a notice of commencement of a preliminary injury inquiry in the *Canada Gazette* and send a copy of the notice to:

- the Commissioner;
- all persons known to the Tribunal to be interested parties; and
- the government of any country from which the dumped or subsidized goods were exported to Canada.

The notice of commencement of preliminary inquiry will set out the information described in Appendix 1. Appendix 2 sets out the schedule for a preliminary inquiry.

The Tribunal will also publish the notice of commencement on its Web site ([www.citt.gc.ca](http://www.citt.gc.ca)).

### **CONDUCT OF A PRELIMINARY INJURY INQUIRY**

In a preliminary injury inquiry, the Tribunal determines whether the evidence discloses a “reasonable indication” that the dumping or subsidizing of the goods has caused material injury or retardation, or is threatening to cause material injury. In a “final” injury inquiry,<sup>3</sup> the Tribunal determines whether the dumping or subsidizing “has caused” material injury or retardation or “is threatening to cause” material injury.

In a preliminary inquiry, the Tribunal may also form a preliminary opinion on whether there is more than one class of dumped or subsidized goods, what are the like goods to the dumped or subsidized goods, and which domestic producers of the like goods comprise the domestic industry for the purposes of the “final” injury inquiry.

In coming to its decision on whether there is a reasonable indication of material injury, the Tribunal will rely on the information received from the Commissioner and submissions from parties. In most cases,

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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. Subsection 34(2).
  3. Section 42.

the Tribunal does not intend to issue questionnaires or hold a public hearing. In exceptional circumstances, however, the Tribunal may decide to issue brief questionnaires (to obtain information necessary for the clarification of the issues that are before the Tribunal) or hold a brief public hearing.

### **Information Provided by the Commissioner**

The Commissioner will file with the Tribunal:

- a copy of the Commissioner's statement of reasons for initiating the investigation;
- a copy of both the public and confidential versions of the written complaint made to the Commissioner; and
- any other information that has been taken into consideration by the Commissioner.

Approximately 22 days following the commencement of the preliminary inquiry, the Tribunal will distribute the public information received from the Commissioner to all parties that filed notices of participation, and the confidential information to counsel who filed a declaration and undertaking with the Tribunal.

### **Submissions by Parties**

The Tribunal will invite submissions from parties opposed to the complaint, such as importers and exporters. Any submissions must be filed on or before the deadline specified by the Tribunal (approximately 32 days following the commencement of the preliminary inquiry). These submissions should include evidence, e.g. documents and sources which support the factual statements in the submissions, and argument concerning the questions of:

- whether there are goods produced in Canada, other than those identified in the Commissioner's statement of reasons for initiating the investigation, that are like goods to the allegedly dumped or subsidized goods;
- whether there is more than one class of allegedly dumped or subsidized goods;
- which domestic producers of like goods comprise the domestic industry; and
- whether the information before the Tribunal discloses a reasonable indication that the alleged dumping or subsidizing of the goods has caused material injury or retardation, or threatens to cause material injury.

The complainant will be given an opportunity to make submissions in response to the submissions of parties opposed to the complaint within approximately 39 days following the commencement of the preliminary inquiry. At that time, other parties supporting the complaint may also make submissions to the Tribunal.

Parties will be directed to serve their public submissions on all other parties. Submissions containing confidential information must be filed with the Tribunal.<sup>4</sup> The Tribunal will distribute the confidential submissions to counsel who filed a declaration and undertaking with the Tribunal.

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4. See the Tribunal's *Guidelines on the Treatment of Confidential Information* available on the Tribunal's Web site at [www.citt.gc.ca](http://www.citt.gc.ca).

## **PRELIMINARY DETERMINATION OF MATERIAL INJURY**

On or before the 60th day after the initiation of the Commissioner's investigation, the Tribunal will make a preliminary determination, followed by reasons in approximately 15 days. If the Tribunal determines that there is a reasonable indication that the dumping or subsidizing of any of the goods has caused material injury or retardation, or is threatening to cause material injury, the Commissioner will continue the dumping or subsidizing investigation with respect to those goods.<sup>5</sup> If the Tribunal finds no evidence of a reasonable indication that the dumping or subsidizing of any of the goods has caused material injury or retardation, or is threatening to cause material injury, the Tribunal will terminate its preliminary injury inquiry with respect to those goods, and the Commissioner will terminate the dumping or subsidizing investigation with respect to those goods.

If the Commissioner makes a preliminary determination of dumping or subsidizing with respect to any goods, the Tribunal will commence a "final" injury inquiry<sup>6</sup> with respect to those goods.

Upon commencing a "final" injury inquiry, the Tribunal may decide, or a party may request, that all or part of the record of the preliminary injury inquiry be transferred to the record of the "final" injury inquiry. Parties that filed notices of participation for the preliminary injury inquiry will not need to file further notices of participation. Counsel who filed a declaration and undertaking for the preliminary injury inquiry will need to confirm that the declaration and undertaking is still in effect for the "final" injury inquiry.

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5. The Commissioner will make a preliminary determination of dumping or subsidizing, or terminate the investigation, on or before the 90th day following the initiation of the investigation. Pursuant to section 39 of the *Special Import Measures Act*, the 90-day time limit for making a preliminary determination can, under the circumstances listed in that section, be extended to 135 days following the initiation of the investigation.
  6. Section 42 of the *Special Import Measures Act*.

**APPENDIX 1****INFORMATION CONTAINED IN THE TRIBUNAL'S NOTICE OF COMMENCEMENT OF PRELIMINARY INQUIRY**

A notice of commencement of preliminary inquiry contains:<sup>7</sup>

1. the statutory authority for the inquiry;
2. the subject matter of the inquiry;
3. the date by which an interested party must file a notice of participation;
4. the date on which counsel for an interested party must file a notice of representation and, if appropriate, a declaration and undertaking ;
5. the date on 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 preliminary inquiry may be obtained; and
9. any other information that is relevant to the preliminary injury inquiry that the Tribunal specifies.

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7. See rule 52.2 of the *Canadian International Trade Tribunal Rules* for the official wording of these regulatory provisions.

**APPENDIX 2****INDICATIVE SCHEDULE FOR A PRELIMINARY INJURY INQUIRY**

<b>DAY</b>	<b>EVENT</b>
0	Commissioner initiates a dumping or subsidizing investigation and forwards a copy of the information to the Tribunal
1	Tribunal publishes a notice of commencement of preliminary injury inquiry
12	Notice published in the <i>Canada Gazette</i>
16	Parties and counsel file notices of participation, notices of representation and declarations and undertakings
22	Tribunal distributes information received from the Commissioner
32	Tribunal receives submissions by parties opposed to the complaint (importers, exporters and others)
39	Tribunal receives reply submissions from the complainant and submissions in support of the complaint
60	Tribunal makes a preliminary injury determination or terminates the inquiry
75	Tribunal issues its reasons