



## INTERIM GUIDELINE

### SAFEGUARD INQUIRIES—IMPORTS FROM CHINA

March 31, 2003

#### INTRODUCTION

This guideline sets out the Tribunal's policies and procedures for safeguard inquiries with respect to increased imports from the People's Republic of China (China). The *Canadian International Trade Tribunal Act* (CITT Act) was amended to provide for such inquiries. The amendments to the CITT Act came into effect on September 30, 2002, to implement the safeguard provisions of the Protocol on the Accession of the People's Republic of China to the World Trade Organization (Protocol), which came into effect on December 11, 2001. These bilateral safeguard provisions will be available until December 11, 2013.

The legislation provides for:

- Market disruption inquiries
- Market disruption extension inquiries
- Trade diversion inquiries

This guideline provides detailed information on the conduct of market disruption inquiries and trade diversion inquiries. More detailed information on market disruption extension inquiries will be issued in a future revised guideline.

This guideline does not supplant the provisions of the CITT Act or those of any other relevant acts, regulations or rules. This guideline and other important documents, such as the Tribunal's *Procedural Guidelines for the Designation and Use of Confidential Information in Canadian International Trade Tribunal Proceedings*, are on the Tribunal's Web site (<http://www.citt-tcce.gc.ca>). This guideline is not a binding statement of how the Tribunal's discretion will be exercised in a particular situation. Rather, it is meant to provide assistance to interested parties when dealing with cases before the Tribunal by providing them with a brief description of the basic procedures that the Tribunal would ordinarily follow. The Tribunal may vary these procedures if it considers it more appropriate in the circumstances of an individual case.

Interested parties are invited to provide comments on this interim guideline. Any comments should be filed with the Secretary.

#### SAFEGUARD MEASURES ON IMPORTS FROM CHINA

If the Tribunal determines that increased imports of goods from China have caused, or are threatening to cause, market disruption to Canadian producers of like goods, the Government may apply import measures to prevent or remedy the market disruption. If the Tribunal determines that an action under the Protocol, which has affected imports into a World Trade Organization (WTO) country, has caused or is threatening to cause a significant diversion of trade away from the country where the action was taken, the Government may apply safeguard measures sufficient to prevent or remedy the trade diversion. Under amendments to the *Customs Tariff* and the *Export and Import Permits Act*, the Government may impose surtaxes, quotas or tariff rate quotas.

## MARKET DISRUPTION INQUIRIES

The purpose of a market disruption inquiry is to determine whether:

- goods originating in China are being imported into Canada in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive goods (like goods).

Following receipt of a complaint from domestic producers, the Tribunal will decide normally within 21 days whether or not to accept the complaint and to commence an inquiry. If it commences an inquiry, it must submit its report to the Government and the Minister of Finance (the Minister) within 90 days. The Government may direct the Tribunal to report on other matters, including measures to prevent or remedy market disruption, during or after an inquiry.

The Government may also direct the Tribunal to conduct a market disruption inquiry. The Tribunal must submit its report no later than the date established by Order in Council.

### Tribunal's Determination

“Market disruption” means a rapid increase in the importation of goods that are like the goods produced by a domestic industry, in absolute terms or relative to the production of like goods, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

“Significant cause” means an important cause that need not be as important as, or more important than, any other cause of the material injury or threat.

In making its determination, the Tribunal is to examine, among other factors:

- (a) the actual volume of the goods imported into Canada from China;
- (b) the effect of the imported goods on prices of like goods in Canada; and
- (c) the impact of the imported goods on domestic producers of like goods in Canada.

### Complaints by Domestic Producers

One or more domestic producers may file a written complaint with the Tribunal alleging that the goods are being imported from China in such increased quantities or under such conditions as to cause or threaten to cause market disruption. The complaint may be filed by any person or association acting on behalf of the domestic producers.

The complaint must:

- (a) provide, in detail, the facts and documentary evidence supporting the allegations;
- (b) provide an estimate of the total percentage of Canadian production of the like goods produced by the domestic producers by whom or on whose behalf the complaint is filed and documentary evidence to substantiate this estimate;
- (c) be accompanied by any other information that may be required by the *Canadian International Trade Tribunal Rules* (Rules); and
- (d) make any other representations that the complainant deems relevant to the matter.

Full information on the filing of the complaint and required information can be found in the document entitled *Safeguard Inquiry—Market Disruption—Imports from China—Guide for Complainant*. This document is available on the Tribunal's Web site. The complaint must be signed by the complainant and filed with the Secretary.

The Tribunal will decide whether to commence an inquiry on the basis of the information in the complaint as filed and information that the Tribunal may obtain from other sources, normally within 21 days of the date of filing. If the complaint does not contain all the required information, as set out in the Guide for Complainant, the Tribunal will consider that it is not a properly documented complaint and will close the file.

#### Decision to Commence an Inquiry

If the complaint meets the requirements set out above, the Tribunal will commence an inquiry, if it is satisfied that:

- (a) the information provided by the complainant and any other information examined by the Tribunal discloses a reasonable indication that the goods originating in China are being imported in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like goods;
- (b) the complaint is made by or on behalf of domestic producers that produce a major proportion of the domestic production of the like goods; and
- (c) where the Tribunal completed or terminated a market disruption inquiry on the same goods during the 12-month period preceding the date of receipt of the complaint, the circumstances are sufficiently different to warrant a new inquiry.

#### Decision not to Commence an Inquiry

If, upon consideration of a properly documented complaint, the Tribunal decides not to commence an inquiry, it will:

- (a) notify the complainant and each other interested party in writing of its decision, of the reasons for its refusal to commence an inquiry and whether the reasons for its decision are based in whole or in part on information that was obtained from a source other than the complainant; and
- (b) cause a notice of its decision to be published in the *Canada Gazette*.

### **Conduct of an Inquiry**

#### Notice of Commencement of Market Disruption Inquiry

Where the Tribunal decides to commence an inquiry into the complaint, it will immediately:

- (a) notify the complainant and each other interested party in writing of its decision, of the reasons for it and of the date on which any hearing in the inquiry shall commence;
- (b) cause a notice of its decision and the date on which any hearing in the inquiry shall commence to be published in the *Canada Gazette*; and

- (c) send to the Minister a copy of its decision, a copy of the complaint, and the information accompanying the complaint,<sup>1</sup> and a copy of any other relevant information examined by the Tribunal in relation to the complaint.

The Tribunal's notice of commencement of inquiry will include all the relevant information, including the name of the complainant, the description of the goods subject to the inquiry, the date to file a written submission and the place and time fixed for the commencement of the hearing. It will be placed on the Tribunal's Web site.

The following table contains the schedule for a market disruption inquiry.

<b>Day</b>	<b>Events in a Market Disruption Inquiry</b>
1	Commencement of Inquiry and Issuance of Tribunal Questionnaires
10	Receipt of Notices of Participation, Notices of Representation and Declarations and Undertakings
15	Replies to Questionnaires
45	Distribution of Tribunal's Record (including the complaint)
50	Opposing Submissions
55	Response Submissions by those Supporting
60	Commencement of Public Hearing (if required)
90	Submission of Tribunal's Report to the Government and the Minister

#### Tribunal Questionnaires and Pre-hearing Staff Report

Tribunal staff will prepare a pre-hearing staff report, based primarily on replies to questionnaires. The questionnaires will be issued to domestic producers and importers at the same time as the Tribunal issues its notice of commencement of inquiry. The questionnaires will request information relating to the factors that the Tribunal must consider in the inquiry, for example, data on imports and import sales, domestic production and sales, and other indicators of the domestic producers' performance. Replies are to be provided within 15 days.

#### Tribunal's Record

The Tribunal will distribute its administrative record on day 45 of the inquiry. The record includes the complaint, replies to the questionnaires, and the public and protected pre-hearing staff reports. The record is distributed to counsel and parties. Counsel filing notices of representation and declarations and undertakings receive both the public and confidential information, while persons filing notices of participation have access only to the public version of those documents. The relevant forms are available on the Tribunal's Web site. Persons or governments not participating in the Tribunal's inquiry may have access to the public record of the inquiry by contacting the Secretary after the date of distribution.

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1. The Tribunal will provide the Minister with the public version of the complaint.

### Submissions

The domestic producer's complaint is considered to be the initial submission in the inquiry in support of an allegation that increased imports from China are causing or threatening to cause market disruption. Opposing parties may file their submissions on day 50 of the inquiry, or 5 days after the distribution of the Tribunal's record. The Tribunal distributes these submissions to parties and counsel. Parties supporting the complaint then have 5 days, or until day 55 of the inquiry, to file their submissions. Absent exceptional circumstances, the Tribunal will not accept any further submissions following these replies.

### Public Hearing

If the Tribunal deems it appropriate, it will hold a short public hearing. The hearing will normally commence on day 60 of the inquiry. To complete the hearing in the short time available, the Tribunal may apply time allocations among the parties. Any procedural matters will be dealt with in writing in advance of the hearing.

### Tribunal's Report

The Tribunal will submit its report to the Government, the Minister, the complainant and any other person who made representations during the inquiry. The Tribunal's report will be posted on the Tribunal's Web site. The Tribunal will publish a notice of the report in the *Canada Gazette* and provide a copy of the notice to all interested parties.

## **MARKET DISRUPTION EXTENSION INQUIRIES**

No later than 165 days before the expiry of any safeguard measures imposed by the Government to remedy or prevent market disruption, the Tribunal must issue a notice of expiry of the measures. The Tribunal may conduct a market disruption extension inquiry following a request by a domestic producer to determine if the measures continue to be necessary to prevent or remedy market disruption. The Tribunal must submit its report to the Government and the Minister no later than 45 days before the expiry of the measures. The Government may direct the Tribunal to report on other matters during an inquiry, including measures to prevent or remedy market disruption.

## TRADE DIVERSION INQUIRIES

The purpose of a trade diversion inquiry is to determine whether:

- any action affecting imports of goods from China into the market of another WTO country causes or threatens to cause a significant diversion of trade into the domestic market in Canada.

Following receipt of a complaint from domestic producers, the Tribunal will decide normally within 21 days whether or not to accept the complaint and commence an inquiry. If it commences an inquiry, it must submit its report to the Government and the Minister within 70 days. The Government may direct the Tribunal to report on other matters, including measures to prevent or remedy trade diversion, during or after an inquiry.

The Government may also direct the Tribunal to conduct a trade diversion inquiry. The Tribunal must submit its report no later than the date established by Order in Council.

### Tribunal's Determination

“Action” means:

- any trade-related action, including a provisional action, taken by:
  - China to prevent or remedy market disruption in a WTO Member other than Canada, or
  - a WTO Member, other than Canada, to limit imports to prevent or remedy market disruption in that country caused or threatened by the importation of goods originating in China; or
- any combination of such actions.

In making its determination, the Tribunal is to examine, among other factors:

- (a) the actual or imminent increase in Canadian market share of goods originating in China;
- (b) the nature or extent of the action;
- (c) the actual or imminent increase in the importation of goods originating in China that is due to the action;
- (d) the conditions of supply and demand in the domestic market for the like goods; and
- (e) the volume of goods originating in China that are imported into Canada and into any WTO Member taking an action.

### Complaints by Domestic Producers

One or more domestic producers may file a written complaint with the Tribunal alleging that an “action” causes or threatens to cause a significant diversion of trade into the domestic market in Canada. The complaint may be filed by any person or association acting on behalf of the domestic producers.

The complaint must:

- (a) provide, in detail, the facts and documentary evidence supporting the allegations;
- (b) provide an estimate of the total percentage of Canadian production of the like goods produced by the domestic producers by whom or on whose behalf the complaint is filed and documentary evidence to substantiate this estimate;
- (c) be accompanied by any other information that may be required by the Rules; and
- (d) make any other representations that the complainant deems relevant to the matter.

Full information on the filing of the complaint and required information can be found in the document entitled *Safeguard Inquiry—Trade Diversion—Imports from China—Guide for Complainant*. This document is available on the Tribunal's Web site. The complaint must be signed by the complainant and filed with the Secretary.

The Tribunal will decide whether to commence an inquiry on the basis of the information in the complaint as filed and information that the Tribunal may obtain from other sources, normally within 21 days of the date of filing. If the complaint does not contain all the required information, as set out in the Guide for Complainant, the Tribunal will consider that it is not a properly documented complaint and will close the file.

#### Decision to Commence an Inquiry

If the complaint meets the requirements set out above, the Tribunal will commence an inquiry, if it is satisfied that:

- (a) the information provided by the complainant and any other information examined by the Tribunal discloses a reasonable indication that an action causes or threatens to cause a significant diversion of trade into the domestic market in Canada; and
- (b) the complaint is made by or on behalf of domestic producers that produce a major proportion of the domestic production of the like goods.

#### Decision not to Commence an Inquiry

If, upon consideration of a properly documented complaint, the Tribunal decides not to commence an inquiry into the complaint, it will

- (a) notify the complainant and each other interested party in writing of its decision, of the reasons for its refusal to commence an inquiry and whether the reasons for its decision are based in whole or in part on information that was obtained from a source other than the complainant; and
- (b) cause a notice of its decision to be published in the *Canada Gazette*.

## Conduct of an Inquiry

### Notice of Commencement of a Trade Diversion Inquiry

Where the Tribunal decides to commence an inquiry into the complaint, it will immediately:

- (a) notify the complainant and each other interested party in writing of its decision, of the reasons for it and of the date on which any hearing in the inquiry shall commence;
- (b) cause a notice of its decision and the date on which any hearing in the inquiry shall commence to be published in the *Canada Gazette*; and
- (c) send to the Minister a copy of its decision, a copy of the complaint, and the information accompanying the complaint,<sup>2</sup> and a copy of any other relevant information examined by the Tribunal in relation to the complaint.

The Tribunal's notice of inquiry will include all the relevant information, including the name of the complainant, the description of the goods subject to the inquiry, the date to file a written submission and the place and time fixed for the commencement of the hearing. It will be placed on the Tribunal's Web site.

The following table contains the schedule for a trade diversion inquiry.

Day	Events in a Trade Diversion Inquiry
1	Commencement of Inquiry and Issuance of Tribunal Questionnaires
10	Receipt of Notices of Participation, Notices of Representation and Declarations and Undertakings
10	Replies to Questionnaires
25	Distribution of Tribunal's Record (including the complaint)
30	Opposing Submissions
35	Response Submissions by those Supporting
40	Commencement of Public Hearing (if required)
70	Submission of Tribunal's Report to the Government and the Minister

### Tribunal Questionnaires and Pre-hearing Staff Report

Tribunal staff will prepare a pre-hearing staff report, based primarily on replies to questionnaires. The questionnaires will be issued to domestic producers and importers at the same time as the Tribunal issues its notice of commencement of inquiry. The questionnaires will request information relating to the factors that the Tribunal must consider in the inquiry and, in particular, data on imports from China and on supply and demand for the goods in Canada. Replies are to be provided within 10 days.

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2. The Tribunal will provide the Minister with the public version of the complaint.



### Tribunal's Record

The Tribunal will distribute its administrative record on day 25 of the inquiry. The record includes the complaint, replies to the questionnaires, and the public and protected pre-hearing staff reports. The record is distributed to counsel and parties. Counsel filing notices of representation and declarations and undertakings receive both the public and confidential information, while persons filing notices of participation have access only to the public version of those documents. The relevant forms are available on the Tribunal's Web site. Persons or governments not participating in the Tribunal's inquiry may have access to the public record of the inquiry by contacting the Secretary after the date of distribution.

### Submissions

The domestic producer's complaint is considered to be the initial submission in the inquiry in support of an allegation that an action into the market of another WTO country is causing or threatening to cause trade diversion. Opposing parties may file their submissions on day 30 of the inquiry, or 5 days after the distribution of the Tribunal's record. The Tribunal distributes these submissions to parties and counsel. Parties supporting the complaint then have 5 days, or until day 35 of the inquiry, to file their submissions. Absent exceptional circumstances, the Tribunal will not accept any further submissions following these replies.

### Public Hearing

If the Tribunal deems it appropriate, it will hold a short public hearing. The hearing will normally commence on day 40 of the inquiry. To complete the hearing in the short time available, the Tribunal may apply time allocations among the parties. Any procedural matters will be dealt with in writing in advance of the hearing.

### Tribunal's Report

The Tribunal will submit its report to the Government, the Minister, the complainant and any other persons who made representations during the inquiry. The Tribunal's report will be posted on the Tribunal's Web site. The Tribunal will publish a notice of the report in the *Canada Gazette* and provide a copy of the notice to all interested parties.

## **CONTACTING THE TRIBUNAL**

Please address all inquiries to:

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

Telephone: (613) 993-3595  
Fax: (613) 990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)  
Web site: <http://www.citt-tcce.gc.ca>