

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL



TRIBUNAL CANADIEN
DU COMMERCE
EXTÉRIEUR



INFORMATION



on dumping and subsidizing
inquiries and reviews

ABOUT THE CANADIAN INTERNATIONAL TRADE TRIBUNAL

The Canadian International Trade Tribunal (the Tribunal) is an independent administrative tribunal operating within Canada's trade remedies system. It is a quasi-judicial body that reports to Parliament through the Minister of Finance.

One of the responsibilities of the Tribunal is to determine if Canadian producers suffer injury from imported goods that are unfairly sold in the Canadian market. If the Tribunal decides that dumped or subsidized goods have caused injury to Canadian producers of like goods, the international agreements allow the imposition of duties to protect them from these unfair imports.

LEGISLATIVE BACKGROUND FOR DUMPING AND SUBSIDIZING INQUIRIES AND REVIEWS

Canada, like many trading nations, has traditionally had measures in place to protect domestic businesses from injury due to unfair import competition. The *Special Import Measures Act* (SIMA), passed in 1984, is one of the principal legislative mechanisms by which such protection is provided. SIMA's provisions cover Canada's rights and obligations regarding certain trade remedies under the *Agreement Establishing the World Trade Organization* (the WTO Agreement).

Under SIMA, Canadian producers may ask for relief from unfair and injurious competition from goods exported to Canada:



- at prices lower than in the home market or lower than the cost of production (dumping), or
- that have benefited from certain types of financial contributions or support from governments (subsidizing).

It is the Tribunal's responsibility to decide whether dumped or subsidized imports have caused material injury, retardation or are threatening to cause material injury to Canadian producers of like goods. It is the responsibility of the Department of National Revenue (Revenue Canada) to determine whether goods have been dumped or subsidized.

If the Tribunal decides that there is injury, anti-dumping or countervailing duties are assessed on the imported goods. If the Tribunal finds no injury, the case is over and any provisional duties collected by Revenue Canada are refunded.

WHAT IS INJURY?

The term "injury" is used in SIMA to refer to material injury to domestic producers of like goods, material retardation of the establishment of a domestic industry or threat of material injury to domestic producers of like goods.

There is no precise definition of injury. However, the *Special Import Measures Regulations*, in accordance with the WTO Agreement, instruct authorities to consider significant increases in dumped or subsidized imports, significant price undercutting or significant price depression as factors indicating injury. Other important factors to be examined include the impact on output, sales, market share, profits, capacity utilization, inventories and employment. In making a finding, injury caused by other factors is not to be attributed to the dumped or subsidized imports.

INJURY INQUIRIES

Starting the Process

When one or more Canadian producers believe that dumped or subsidized imports are harming their businesses, a complaint can be made to the Deputy Minister of National Revenue (the Deputy Minister). An association of Canadian producers can also make a complaint.

If there is a reasonable indication that the dumping or subsidizing is injuring Canadian producers of like goods, Revenue Canada launches an investigation. Exporters and importers of the goods in issue are placed on notice and their transactions are investigated.

Revenue Canada usually completes its investigation within 90 days. The Deputy Minister may then take one of two actions:

- terminate the investigation; or
- issue a preliminary determination.

A preliminary determination usually indicates the preliminary margin of dumping or the amount of the subsidy, the percentage of imports that are dumped or subsidized and whether there continues to be a reasonable indication of injury.

If a preliminary determination is issued, Revenue Canada begins to collect provisional duties on the dumped or subsidized imports.

The Tribunal begins its injury inquiry when the Deputy Minister issues a preliminary determination of dumping or subsidizing.

Informing Interested Parties

The Tribunal tries to ensure that potential participants are made aware of the inquiry by issuing a notice which is published in the *Canada Gazette*, Part I, and forwarded to all known interested parties. The notice identifies the product and country of export and outlines the general rules to be followed by parties wishing to participate in the inquiry. It also gives information on dates for the submission of briefs, the filing of information requested by the Tribunal and the date and location of the public hearing.

In addition, the Tribunal requests information from interested parties, receives representations and holds public hearings. It may also conduct plant visits. Parties participating in these proceedings may conduct their own cases. However, because these cases are often complex, most parties choose to be represented by counsel.

As part of the inquiry, Tribunal staff obtains information through questionnaires and interviews with manufacturers, importers of the goods in issue and purchasers. This information forms the basis of a staff report which sets out the information in the context of the factors to be examined by the Tribunal in arriving at its decision. This report becomes part of the case record and is made available to counsel and participants in the inquiry. Where confidential information is provided to the Tribunal, it falls within the protection of the *Canadian International Trade Tribunal Act* (the CITT Act). The Tribunal will distribute confidential information only to counsel who are acting on behalf of a party and who have signed a declaration and undertaking not to disclose confidential information.

Within 90 days of issuing a preliminary determination, the Deputy Minister issues a final determination of dumping or subsidizing. A final determination provides a more accurate assessment of the extent of dumping or subsidizing. During this period, the Deputy Minister may also accept an "undertaking" from foreign exporters (for dumping) or foreign governments (for subsidizing) if they agree to raise their prices in order to remove the dumping or subsidizing. In this case, the investigation and the Tribunal's inquiry are suspended. An undertaking can be made up to 60 days after the Deputy Minister makes a preliminary determination.

Public Hearing

At about the same time as the Deputy Minister issues the final determination, the Tribunal usually begins the public hearing phase of its inquiry.

At the public hearing, the domestic industry must provide evidence that the dumping or subsidizing of goods has caused injury or retardation or is threatening to cause injury. The domestic producers' evidence that is presented may cover such factors as loss of sales to dumped or subsidized imports, price erosion or suppression, and declines in market share, profitability and employment. Importers or exporters and sometimes users challenge the domestic industry's case. After cross-examination, each side has an opportunity to respond to the other's case and to summarize its own. Parties may also ask for exclusions from a finding, in the event that the Tribunal makes an injury finding.

Issuing a Finding

The Tribunal issues its finding within 120 days from the date of the preliminary determination. It has another 15 days to issue a statement of reasons explaining its finding. The finding and the statement of reasons are sent to all interested parties, and the finding is published in the *Canada Gazette*, Part I.

Public Interest Considerations

SIMA also contains procedures which allow the Tribunal to recommend that anti-dumping or countervailing duties be reduced or eliminated, if this is considered to be in the public interest. Interested parties or the Tribunal itself may raise this issue during the inquiry. However, the Tribunal will investigate the matter only if it makes an injury finding and there appears to be a public interest issue worthy of investigation. After its investigation, the Tribunal reports to the Minister of Finance, giving the reasons for its recommendation that the public interest warrants a reduction or elimination of the duties. It is the Minister of Finance who decides whether the duties should be reduced or eliminated.

Advice

When the Deputy Minister decides not to initiate a dumping or subsidizing investigation because evidence of injury is insufficient, the Deputy Minister or the domestic industry may ask the Tribunal for an opinion about whether the evidence shows a reasonable indication of injury.

If an investigation has already been started, the Deputy Minister may refer the question of injury to the Tribunal. An exporter, importer or government of the exporting country may also ask the Tribunal for an opinion about whether the evidence shows an indication of injury.

The Tribunal has 30 days to make its decision. The Tribunal provides its advice based only on the information that was before the Deputy Minister when the decision was made. No hearing is held.

The decision of the Tribunal is binding. If the Tribunal finds a reasonable indication of injury caused by dumping or subsidizing, the Deputy Minister either continues or begins an investigation. If no indication of injury is found, the case is terminated.

REVIEW PROCESS

Reasons for Review

A finding lapses automatically five years after the date of issuance, unless the Tribunal has initiated a review of the finding. The Tribunal notifies interested parties eight months before the expiry date of a finding. In the notice, interested parties are asked to make submissions, giving reasons why a review should be held or why the finding should simply be allowed to expire. The Tribunal will initiate a review if it determines that it is warranted.

The Tribunal may also review its findings before issuing a notice of expiry because of a change in circumstances. It may do so on its own initiative or at the request of the Deputy Minister, interested parties or any other person or government.

In addition, the Minister of Finance may ask the Tribunal to review a finding in light of a recommendation or ruling of the WTO dispute settlement body.

The purpose of a review is to determine if anti-dumping or countervailing duties are still necessary. The Tribunal assesses whether dumping is likely to resume or subsidizing is likely to continue and, if so, whether they are likely to cause material injury to domestic producers.

The review process is similar to that in the original injury inquiry. The Tribunal issues a notice, obtains information through questionnaires, calls for submissions and schedules a public hearing. The time limits are also similar to those in an injury inquiry.

Upon completing a review, the Tribunal issues an order with reasons. If the finding is rescinded, anti-dumping or countervailing duties are no longer collected on imports. The Tribunal may also continue a finding or amend it to exclude a product, a country or sometimes a specific exporter.

If a review results in a decision to continue an injury finding, anti-dumping or countervailing duties may be collected for an additional five years or until the order is reviewed and rescinded.

Judicial or Panel Review

Any party may request a judicial review by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law.

In cases involving goods from the United States and Mexico, parties from these countries or Canada may request judicial review by the Federal Court of Canada or by a binational panel under the provisions of the *North American Free Trade Agreement*.

WTO Dispute Resolution

Governments that are members of the WTO may appeal Tribunal injury findings in dumping and countervailing cases to the WTO. Intergovernmental consultations must precede the launching of an appeal to the WTO.

INTERACTING WITH THE TRIBUNAL

This document is one of a series which describes the work of the Tribunal. Others in the series include:

- Introductory Guide on the Canadian International Trade Tribunal
- Information on Appeals from Customs, Excise and SIMA Decisions
- Information on Textile Tariff Investigations
- Information on Procurement Review

These documents provide general information only. When interpreting and applying the law, readers should refer to the CITT Act, its Regulations, the statutes that the Tribunal administers and the *Canadian International Trade Tribunal Rules*.

The Office of the Secretary of the Tribunal will provide more detailed information on the handling of individual cases. For more information, dial (613) 993-3595.

Internet, Bulletin Board Service and Factsline 24 hours a day, 7 days a week

The Tribunal operates a Web site on the Internet. The site provides general information about the Tribunal, publications of the Tribunal, as well as notices, appeal decisions, advices, findings, orders, statements of reasons, procurement review determinations and textile recommendations. The Tribunal's Web site address is www.citt.gc.ca.

The Tribunal also operates an electronic bulletin board service (BBS) containing the following publications: notices, appeal decisions, advices, findings, orders, statements of reasons, procurement review determinations and textile recommendations. Dial either (613) 990-7605 or (613) 993-0722.

The Tribunal's *Factsline* also makes available the publications listed above. This service can be accessed by dialing (613) 956-7139 using a telecopier telephone and requesting document 1196, which is an index of the documents available.

THE BULLETIN

In addition to the Web site, the BBS and *Factsline*, the Tribunal publishes the *Bulletin*. This quarterly report provides brief descriptions of decisions issued, cases under consideration, appeal withdrawals, notice of hearings and other information about cases appealed or referred to the Tribunal. To be added to the mailing list, dial (613) 993-3595.

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Revenue Canada

The Tribunal

