

FOR IMMEDIATE RELEASE

April 12, 2000

LEGISLATIVE AND PROCEDURAL CHANGES AT THE CANADIAN INTERNATIONAL TRADE TRIBUNAL

The Canadian International Trade Tribunal (the Tribunal) today announced amendments to its Rules. These amendments are designed to implement several changes in the statutory framework governing the Tribunal that will come into effect on April 15, 2000, as announced by the Minister of Finance. In addition to the amended Rules, the Tribunal is issuing interim guidelines outlining the procedures that it will follow for preliminary injury inquiries, public interest inquiries and interim reviews.

The changes are designed to streamline the Tribunal's procedures, expedite the hearing process and provide for new procedures to reflect recent amendments to the *Special Import Measures Act* and the *Canadian International Trade Tribunal Act*. The changes of particular interest to parties include the following:

- The **preliminary determination of injury** will be made by the Tribunal rather than by the Canada Customs and Revenue Agency (CCRA).
- The criteria for commencing a **public interest inquiry** and for making recommendations will be clarified.
- In an **interim review**, the Tribunal may also review any aspect of a finding.
- When conducting an **expiry review**, the Tribunal will focus exclusively upon the likelihood of injury. The CCRA will determine the likelihood of dumping or subsidizing.
- Where the volume of imports from a country is **negligible**, the Tribunal will terminate the injury inquiry respecting those imports.
- When conducting an injury inquiry, the Tribunal will consider evidence of **sales of foreign products** that have not yet arrived in Canada.
- When considering the effects of dumped or subsidized imports from more than one country (subject to certain conditions), the Tribunal must conduct a **cumulative analysis** of the subject imports.
- To ensure the continued **protection of confidential information**, there will be substantial penalties for breach of confidentiality undertakings.

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For additional information, please contact the office of the Secretary at (613) 993-3595, or visit the Tribunal's Web site at www.citt.gc.ca for copies of the revised Rules and the interim guidelines.

Enclosure: Backgrounder

April 12, 2000

BACKGROUNDER

LEGISLATIVE AND PROCEDURAL CHANGES AT THE CANADIAN INTERNATIONAL TRADE TRIBUNAL¹

Introduction

The Canadian International Trade Tribunal (the Tribunal) conducts an inquiry to determine if dumped or subsidized imports are causing or threatening to cause injury to Canadian producers of goods (injury inquiry). If the imports are causing or threatening to cause injury, the Canada Customs and Revenue Agency (CCRA) applies duties to offset the injury for a period of five years. Following a subsequent public interest inquiry, the Tribunal may recommend to the Minister of Finance the elimination or the reduction of duties, if it is of the opinion that the full duties are not in the **public interest**. The Tribunal can review a finding to determine if it should be amended, continued or rescinded.

The legislative amendments to the *Special Import Measures Act* (SIMA) change how the Tribunal deals with injury and public interest inquiries, as well as how interim and expiry reviews are handled. One of the most important changes to the *Canadian International Trade Tribunal Act* (CITT Act) is to give qualified experts access, on a controlled basis, to confidential information in all Tribunal inquiries. For more information on the Tribunal's functions and activities, see the [Introductory Guide on the Canadian International Trade Tribunal](#).

The *Canadian International Trade Tribunal Rules* have been amended to implement the legislative changes in SIMA and the CITT Act, as well as to codify certain administrative changes designed to make the Tribunal's procedures fairer, more efficient and more transparent. See the [Canadian International Trade Tribunal Rules](#).

Changes in an Injury Inquiry

Under the SIMA legislative changes, the Tribunal will make the preliminary determination of whether there is a reasonable indication of injury from dumped or subsidized imports. This determination was previously made by the CCRA. The preliminary injury inquiry will give parties and the Tribunal a better understanding of the issues, thus paving the way for a more efficient and less costly final injury inquiry.

Domestic producers will continue to file their complaint of injurious dumping or subsidizing with the [CCRA](#). Once the CCRA decides to initiate an investigation, the matter of injury is referred to the Tribunal for the preliminary determination of injury. Parties and their counsel will have access to the record, including the complaint and other relevant information filed with the CCRA. Parties will be invited to make submissions not only on whether there is injury but also on other issues, such as what domestically produced goods should be investigated by the Tribunal in the injury inquiry. The Tribunal will complete the

1. This backgrounder is intended only as a general descriptive overview of the changes being introduced. Interested readers should refer to the legislation, the regulations, the rules and the guidelines for more complete and authoritative coverage of specific changes.

preliminary injury inquiry within 60 days. For an interim guideline, see the [Guideline on Preliminary Injury Inquiries](#).

There are three other changes affecting how the Tribunal will conduct the injury inquiry. First, the Tribunal must terminate an injury inquiry with respect to imports from a country if the volume of dumped or subsidized imports is **negligible**. Second, because of a change in the definition of which dumped or subsidized goods the Tribunal must consider, parties and questionnaire respondents will have to report, in addition to goods actually imported, any goods that have been **sold for export** to Canada. Third, in most circumstances where there are dumped or subsidized imports from more than one country, the Tribunal must consider the **cumulative** effect on the domestic industry of those imports.

The changes in conducting an injury inquiry will come into force in cases where the CCRA has determined, after April 15, 2000, that an injurious dumping or subsidizing complaint is properly documented.

Public Interest Inquiries

The Tribunal's public interest mandate does not change. However, the amendments clarify the public interest procedures and give explicit guidance on what the Tribunal should consider in assessing the public interest. The Tribunal may recommend duty reductions or a price or prices that eliminate injury. For an interim guideline, see the [Guideline on Public Interest Inquiries](#).

Those seeking a reduction or the elimination of duties will request a public interest inquiry within 45 days after a finding of injury. If the Tribunal finds that there are **reasonable grounds** for a public interest inquiry, it will commence a public interest inquiry. The legislation also makes it clear that the Tribunal can, on its own initiative, commence a public interest inquiry. See the [Canadian International Trade Tribunal Rules](#).

The changes in the public interest provisions will come into force in cases where the CCRA has determined, after April 15, 2000, that an injurious dumping or subsidizing complaint is properly documented.

Reviews

The legislation creates separate interim and expiry review proceedings.

Under the **interim review** provision, anyone can request a review of either the entire finding or order or any aspect of it. The latter is a new provision. For example, an importer could request the exclusion, from a finding or order, of goods that are no longer produced in Canada. As a result of the SIMA amendments, the Tribunal's interim review determination on an aspect of a finding or order will not affect the remainder of the finding or order, which will remain in place until its normal date of expiry. Anyone seeking a review of a finding or order because of new facts or changed circumstances will also make a request under this provision. For an interim guideline, see the [Guideline on Interim Reviews](#).

An injury finding or an order expires on its fifth anniversary, unless an **expiry review** has been commenced. The Tribunal will issue a notice of expiry about 10 months prior to the expiry date and, on the basis of submissions, will decide within 50 days if an expiry review is warranted.

If the Tribunal decides to commence a review, the CCRA will then have 120 days to determine if there is a likelihood of dumping or subsidizing. The CCRA will issue one set of questionnaires for expiry

reviews, and the replies will be transferred to the Tribunal to eliminate the need for similar questionnaires. Parties in an expiry review will make their submissions on dumping and subsidizing to the CCRA rather than to the Tribunal.

If the CCRA decides that there is a likelihood of dumping or subsidizing, the Tribunal will then have 130 days to determine if there is likelihood of injury. Parties will continue to make their submissions on injury to the Tribunal. See the [Canadian International Trade Tribunal Rules](#).

The changes in review proceedings will come into force in cases where the Tribunal issues a notice indicating that it will conduct a review after April 15, 2000.

Access to Confidential Information

The amendments to the CITT Act and the *Canadian International Trade Tribunal Rules* provide for access to confidential information in Tribunal inquiries to **experts** and counsel, including foreign counsel, subject to conditions that the Tribunal considers necessary or desirable. Under the previous regime, experts who were given access to confidential information had to sign undertakings as counsel and could not testify as witnesses. Experts may now give evidence based on the confidential information in a case.

Access to confidential information, however, will only be given to those who are accepted as experts and counsel by the Tribunal and who provide an undertaking promising not to disclose the confidential information without the Tribunal's authorization and agreeing to respect any terms and conditions imposed by the Tribunal.

To ensure the continued compliance of both experts and counsel with Tribunal confidentiality undertakings, the SIMA amendments provide substantial fines (up to \$1 million) in the event that anyone who has access to confidential information discloses it without authorization.