

GUIDELINE

PUBLIC INTEREST INQUIRIES

This guideline sets out the Tribunal's general approach to public interest inquiries.¹ A public interest inquiry may be conducted by the Tribunal following a finding of injury caused by dumped or subsidized imports. Normally, an injury finding leads to the imposition of antidumping or countervailing duties. The Tribunal may decide, either as a result of a request from an interested person or on its own initiative, that there are reasonable grounds to consider that the imposition of part or all of those duties may not be in the public interest. The Tribunal will then conduct a public interest inquiry pursuant to the *Special Import Measures Act*.² The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by how much.

There are two phases in a public interest inquiry. In the **commencement phase**, the Tribunal decides whether there are reasonable grounds to commence a public interest inquiry. In the **investigation phase**, the Tribunal conducts its inquiry and prepares a report to the Minister of Finance, if warranted. A brief description of these two phases is set out below.

COMMENCEMENT OF A PUBLIC INTEREST INQUIRY

Notice of Commencement of an Injury Inquiry

The Tribunal's notice of commencement of an injury inquiry indicates, in general terms, how it may consider public interest issues if it makes an injury finding. The Tribunal may choose to commence, on its own, a public interest inquiry upon making its injury finding, or interested persons may request a public interest inquiry within 45 days of an injury finding.

Persons who wish to notify the Tribunal of their public interest concerns at an early stage will be invited to do so when the notice of commencement of an injury inquiry is published. However, the Tribunal does not expect public interest issues to be discussed during that inquiry.

Requests for the Commencement of a Public Interest Inquiry

A request for a public interest inquiry may be made by any party to the injury inquiry or by any other group or person affected by the injury finding. A request must be filed with the Tribunal within 45 days of the injury finding. The Tribunal will review requests to ensure that they comply with the requirements set out in Appendix 1. Requests which do not meet these requirements will be returned to the requesters for completion within the same 45-day time frame.

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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 45.

Tribunal's Notice of a Request for a Public Interest Inquiry

If the Tribunal receives a properly documented request to commence a public interest inquiry, it will notify all those who were sent a copy of the Tribunal's injury finding of this fact and invite them to respond if they wish. A copy of the request will be published on the Tribunal's Web site (www.citt.gc.ca). A copy of the request may also be obtained by writing to the Tribunal.

Responses to a Request for the Commencement of a Public Interest Inquiry

Responses should be received by the Tribunal no later than 21 days after the Tribunal's notice of receipt of a request. Responses should address the facts and arguments contained in the request and provide any other information that would assist the Tribunal in forming an opinion about whether there are reasonable grounds to consider reducing or eliminating duties.

Tribunal's Decision on Whether to Commence a Public Interest Inquiry

No later than 10 days after the deadline for responses, the Tribunal will decide whether there are reasonable grounds to believe that the imposition of the duties in the full amount would not or might not be in the public interest. If the Tribunal decides that these grounds exist, it will issue a notice of commencement of public interest inquiry which will include information on the procedures that it will follow in conducting the inquiry. The notice of commencement of public interest inquiry will also be published in the *Canada Gazette*.

If the Tribunal decides not to proceed with a public interest inquiry, it will inform all persons who have filed requests or responses of that decision. Reasons for the decision will be issued and published within 15 days of the decision.

Summary

The following table sets out the time frames for the receipt of requests and responses, the decision whether to commence a public interest inquiry and the reasons for the decision (if negative).

| Number of Days after Injury Finding | Event |
|--|--|
| 1 - 45 | Requests for commencement of a public interest inquiry |
| 45 | Tribunal's notice of receipt of requests for commencement of a public interest inquiry |
| 66 | Responses to requests for commencement of a public interest inquiry |
| 76 | Tribunal decision on whether to commence a public interest inquiry |
| 91 | Reasons for Tribunal's decision, if it decides not to conduct an inquiry |

CONDUCT OF A PUBLIC INTEREST INQUIRY

Notice of Commencement of Public Interest Inquiry

The Tribunal's notice of commencement of public interest inquiry will include a schedule of the procedures³ that it will follow in conducting the inquiry. The procedures may vary depending on such factors as the complexity of the public interest issues raised and the number of parties involved. There will be an opportunity for parties to file submissions and to reply to these submissions. A public hearing will normally be held.

A person interested in making public interest representations to the Tribunal should make a written request to the Secretary no later than 21 days from the date of the Tribunal's notice of commencement of a public interest inquiry.

Factors to be Considered in a Public Interest Inquiry

In conducting a public interest inquiry, the Tribunal will take into account any factors that it considers relevant, including those set out in Appendix 2.

In their submissions and replies, parties should address all the factors that they consider relevant in assisting the Tribunal to arrive at its opinion. They should also discuss potential duty reduction remedies to be applied if the Tribunal were to be of the opinion that a reduction of duties would be in the public interest.

Tribunal's Opinion

Approximately 100 days after commencement of the public interest inquiry, the Tribunal will issue its opinion on whether a reduction of duties would be in the public interest. If the Tribunal concludes that no reduction is warranted, it will publish a brief report with reasons. If, however, the Tribunal concludes that there is a public interest in favour of the reduction of the duties, it will issue a report to the Minister of Finance containing its opinion. The Tribunal will publish a notice of its report in the *Canada Gazette*, and a copy of the report will be sent to all parties to the inquiry. The report will also be available on the Tribunal's Web site.

A report to the Minister of Finance will contain specific recommendations, with supporting reasons, for:

- a level of reduction of the antidumping or countervailing duties; or
- a price or prices that are adequate to eliminate injury, retardation or the threat of injury to the domestic industry.

Summary

The following table sets out the approximate schedule of the major events in a typical public interest inquiry.

3. The procedures are set out in rule 68 of the *Canadian International Trade Tribunal Rules*, a copy of which is available, upon request, from the Secretary.

| Number of Days after Commencement of Inquiry | Event |
|---|-----------------------------|
| 35 | Parties file submissions |
| 46 | Parties file replies |
| 56 | Public hearing begins |
| 100 | Tribunal issues its opinion |

APPENDIX 1**INFORMATION TO BE INCLUDED IN A REQUEST
FOR THE COMMENCEMENT OF A PUBLIC INTEREST INQUIRY**

A request to the Tribunal to commence a public interest inquiry shall:⁴

1. include (when applicable) the name, address for service, telephone number, fax number and electronic mail address of the requester and of the requester's counsel, and be signed by the requester or the requester's counsel;
2. include a statement of the public interest affected by the imposition of the antidumping or countervailing duty, indicating the degree to which it is affected;
3. include sufficient information as to whether the imposition of the antidumping or countervailing duty would not or might not be in the public interest;
4. address all relevant factors, including, where applicable:
 - (a) the availability of goods of the same description from countries or exporters to which the order or finding does not apply,
 - (b) the effect that the imposition of the antidumping or countervailing duty has had or is likely to have on:
 - (i) competition in the domestic market,
 - (ii) producers in Canada that use the goods as inputs to produce other goods or services,
 - (iii) competition by limiting access to:
 - goods that are used as inputs in the production of other goods and services, or
 - technology,
 - (iv) the choice or availability of goods at competitive prices for consumers, and
 - (c) the effect that a reduction or elimination of the antidumping or countervailing duty is likely to have on domestic producers of inputs, including primary commodities, used in the production of like goods; and
5. include any other information that is relevant in the circumstances.

4. See subsection 40.1(2) of the *Special Import Measures Regulations* for the official wording of these regulatory provisions.

APPENDIX 2**FACTORS TO BE CONSIDERED BY THE TRIBUNAL
IN A PUBLIC INTEREST INQUIRY**

In conducting a public interest inquiry, the Tribunal takes into account any factors that it considers relevant, including the following:⁵

1. whether goods of the same description are readily available from countries or exporters to which the order or finding does not apply;
2. whether imposition of the full duties has had or is likely to have the following effects:
 - (a) substantially lessen competition in the domestic market in respect of like goods,
 - (b) cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services,
 - (c) significantly impair competitiveness by limiting access to:
 - (i) goods that are used as inputs in the production of other goods and in the provision of services, or
 - (ii) technology,
 - (d) significantly restrict the choice or availability of goods at competitive prices for consumers or otherwise cause them significant harm;
3. whether a reduction or elimination of the antidumping or countervailing duty is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic production of like goods; and
4. any other factors that are relevant in the circumstances.

5. See subsection 40.1(3) of the *Special Import Measures Regulations* for the official wording of these regulatory provisions.