



INFORMATION

ON IMPORT SAFEGUARD INQUIRIES AND MEASURES

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. The Tribunal is a court of record and has the powers of a superior court with respect to certain matters. The *Introductory Guide on the Canadian International Trade Tribunal* provides an overview of the Tribunal and its responsibilities.

One of the responsibilities of the Tribunal is to conduct inquiries to determine if Canadian producers are being seriously injured by increased imports of goods into Canada. The Tribunal may initiate import safeguard inquiries following a complaint by domestic producers. The Government may also direct the Tribunal to conduct import safeguard inquiries (see the information brochure on economic, trade and tariff inquiries). Pursuant to an inquiry where the Tribunal determines that increased imports of the goods have caused, or are threatening to cause, serious injury to Canadian producers of like or directly competitive goods, the Government may apply import safeguard measures to assist those domestic producers.

If the Government initially excludes from safeguard measures imports from countries with which Canada has bilateral free trade agreements, the Tribunal may, following a complaint by domestic producers, conduct an inquiry to determine if a surge in imports from those countries is undermining the effectiveness of the measures. The Tribunal also conducts "mid-term reviews" of import safeguard measures to determine if they should remain in effect, be revoked or be amended. The Tribunal may also, following a request by domestic producers, conduct "extension inquiries" to determine if import safeguard measures that are due to expire continue to be necessary.

LEGISLATIVE BACKGROUND FOR IMPORT SAFEGUARD INQUIRIES AND MEASURES

Canada, like many trading nations, has legislation that allows the application of import safeguard measures to assist domestic producers that have suffered or are threatened by serious injury from increased levels of fairly traded imports. This legislation implements Canada's rights and obligations under the World Trade Organization (WTO) *Agreement on Safeguards* (the WTO Agreement) ("global" safeguard inquiries and measures), the *North American Free Trade Agreement* (NAFTA), the *Canada-Israel Free Trade Agreement* and the *Canada-Chile Free Trade Agreement* ("bilateral" safeguard inquiries and measures). These agreements establish the conditions for applying import safeguard measures as well as notification and consultation procedures for safeguard inquiries and measures.

The Tribunal conducts import safeguard inquiries, exclusion inquiries, mid term reviews and extension inquiries pursuant to the *Canadian International Trade Tribunal Act* (the CITT Act) and its Regulations and the *Canadian International Trade Tribunal Rules*. The Government may apply import safeguard measures in the form of surtaxes pursuant to the *Customs Tariff and Import Permits Act*.



IMPORT SAFEGUARD INQUIRIES

Starting the Process

When one or more Canadian producers of goods believe that an increase in imports of like or directly competitive goods is injuring their businesses, they may file a complaint with the Tribunal. An association of Canadian producers can also make a complaint. The Tribunal first determines if the complaint is properly documented.

The Tribunal initiates an inquiry if the properly documented complaint and any other information examined by the Tribunal disclose that there is a reasonable indication that increased imports are causing or threatening to cause serious injury to Canadian producers of like or directly competitive goods and if the complaint is made or supported by domestic producers that represent a “major proportion” of domestic production of the goods in question.

The complaint process is identical for Canadian producers that believe that, because of tariff reductions under a bilateral free trade agreement, they are being injured by an increase in imports from the country with which there is an agreement. Textile and clothing producers may file a complaint on the basis of either an absolute or a relative increase in imports.

Interested Parties and the Tribunal Inquiry

When it initiates an inquiry, the Tribunal issues a notice of inquiry, which is published in Part I of the *Canada Gazette*, and forwards it to all known interested parties and the governments of countries whose exports will be the object of the inquiry. The notice identifies the product and outlines the general rules for parties wishing to participate in the inquiry. It also gives information on the dates for the submission of briefs and the filing of information requested by the Tribunal, as well as the date and location of the public hearing.

In any safeguard inquiry, the Tribunal typically requests information from interested parties, receives representations and holds a public hearing. Parties may adduce evidence and make argument in support of their position. While parties may choose to be represented by counsel, they are not required to do so.

The Tribunal staff obtains information through questionnaires and other sources and may visit manufacturers, importers and purchasers of the goods in question. The Tribunal staff prepares a report that sets out the facts relating to the factors that the Tribunal is to examine in arriving at its decision. This report becomes part of the record and is made available to counsel and parties in the inquiry.

Where confidential information is provided to the Tribunal, it is protected under the confidentiality provisions of the CITT Act. The Tribunal will distribute confidential information only to counsel acting on behalf of a party who have signed a declaration and undertaking agreeing not to disclose confidential information.

Public Hearing

The Tribunal holds the public hearing phase of its inquiry once the staff report has been distributed and interested parties have made their submissions.

At the public hearing, the domestic industry normally provides evidence that increased imports have caused or are threatening to cause injury. The domestic producers’ evidence may cover such factors as loss of sales to imports, price depression or suppression, as well as declines in market share, profitability and employment. Importers or exporters, and sometimes users of the product, typically challenge the domestic industry’s case. They may submit evidence that the particular variety of goods that they are bringing into the country is not contributing to any serious injury that may be suffered by domestic producers. After cross-examination and questions from Tribunal members, each party has an opportunity to summarize its case and respond to the other parties’ cases in final argument.

Other Considerations in an Import Safeguard Inquiry

During or after an inquiry, the Government may direct the Tribunal to examine and report on related matters, such as the effects on domestic producers of possible courses of action to deal with any serious injury. The CITT Act also requires the Tribunal to refer the matter to Revenue Canada if, before or after the initiation of an inquiry, it forms the opinion that the alleged injury appears to be caused by dumped or subsidized imports. If Revenue Canada does not act or terminates its investigation into dumping or subsidizing, the Tribunal may initiate or resume the inquiry, if requested by the complainant.

Issuing a Report to the Government

The Tribunal submits its report to the Government within 180 days (270 days in complex cases) from the date of the initiation of its inquiry. Notice of the submission of the report is sent to all interested parties and governments and is published in the *Canada Gazette*. The Government submits the Tribunal’s report to Parliament if the Government has requested the inquiry.

INQUIRIES ON EXCLUSIONS FROM GLOBAL SAFEGUARD MEASURES

In cases where the Government has excluded, from global safeguard measures, imports from countries with which Canada has bilateral free trade agreements, domestic producers may file a complaint with the Tribunal that a surge in imports from those countries is undermining the effectiveness of the measures. The Tribunal must decide within 30 days of receipt of a complaint if it will conduct an inquiry. It must report to the Government within 60 days after initiating an inquiry. If the Tribunal reports that a surge in imports is undermining the effectiveness of the measures, the Government may impose the measures on imports from the relevant countries. Notice of the report is given to interested parties and governments and published in the *Canada Gazette*.

MID-TERM REVIEWS

If an import safeguard measure is to remain in place for more than three years, the CITT Act requires the Tribunal to conduct a mid-term review of the measure before its “mid-point.”

The Tribunal notifies interested parties and governments of a mid-term review five months before the mid-point of a measure. The Tribunal’s notice is published in the *Canada Gazette*. Interested parties are asked to make written submissions on why a measure should remain in effect, be revoked or be amended. Based on these submissions and other information, the Tribunal prepares a report to the Government on developments since the measure was applied and advises on whether the measure should remain in effect, be revoked or be amended. Notice of the report is given to interested parties and governments and published in the *Canada Gazette*.

EXTENSION INQUIRIES

The Tribunal may conduct an extension inquiry to determine if an import safeguard measure that is due to expire continues to be necessary. The Tribunal issues a notice of expiry eight months before a measure is scheduled to expire. The notice is provided to all interested parties and governments and published in the *Canada Gazette*.

Domestic producers may file a request for an extension inquiry by providing information specified by the Tribunal, including facts on the proportion of domestic production accounted for by producers making the request. If the Tribunal determines that the request is properly documented, it notifies the requester and other interested parties and governments. The Tribunal will initiate an extension inquiry within 30 days if it is satisfied that the information provided by the requester and any other information disclose a reasonable indication that the measure continues to be necessary to prevent or remedy injury and that the request is made on behalf of producers accounting for a major proportion of domestic production.

The Extension Inquiry Process

The extension inquiry is similar to the initial safeguard inquiry. The Tribunal issues a notice, informs interested parties, governments and the Minister of Finance, obtains information through questionnaires, calls for submissions and holds a public hearing. The Tribunal must submit its report to the Government no later than 45 days before the date of expiry of the measure.

During its extension inquiry, the Tribunal must also determine if there is evidence that the domestic producers are adjusting to the competition from imports of like goods. As in import safeguard inquiries, the Government may ask the Tribunal to examine and report on any other matter relating to the request for an extension inquiry.

Notice of the Tribunal’s report is given to interested parties and governments and published in the *Canada Gazette*. If the Tribunal has determined that the measures remain necessary to prevent or remedy serious injury and that there is evidence that the domestic producers are adjusting to import competition, the Government may extend the safeguard measures.

JUDICIAL REVIEW

Any person directly affected by the Tribunal’s report in a safeguard inquiry may seek judicial review in the Federal Court of Canada.

DISPUTE RESOLUTION

Provisions of the WTO and the bilateral free trade agreements establish consultation and dispute resolution procedures for governments respecting import safeguard inquiries and measures.

A GLOBAL IMPORT SAFEGUARD INQUIRY

Complaint by Domestic Producers

