

## GUIDE TO MAKING REQUESTS FOR PRODUCT EXCLUSIONS

(Injury inquiries under section 42 and reviews under sections 76.01 and 76.03 of the *Special Import Measures Act*)

If the Tribunal determines, in an injury inquiry, that dumped or subsidized imports have caused or threaten to cause material injury to a domestic industry or, in an expiry review, that the continuation or resumption of dumping or subsidizing is likely to result in material injury to a domestic industry, the Tribunal has, pursuant to the *Special Import Measures Act*,<sup>1</sup> the discretion to exclude products which would otherwise be subject to a finding or an order. It may act on its own initiative or at the request of a party. The Tribunal may also exclude a product from a finding or an order following a request for exclusion in the context of an interim review.<sup>2</sup>

This guide and related forms are intended to facilitate the filing of requests for specific product exclusions in Tribunal inquiries and reviews and to ensure that the parties and the Tribunal have all the relevant information needed to address the request in advance of a public hearing or of a decision on whether to commence an interim review.

In considering a request for the exclusion of a product from a finding or an order, the Tribunal typically looks at whether the domestic industry produces and sells or can produce the product or a substitutable product. If the Tribunal determines that a product qualifies for exclusion, the terms of the exclusion are usually drafted in generic terms rather than with reference to trademarks and brand-specific or company-specific terminology. A requester should, therefore, make every effort to provide the Tribunal with the necessary information that describes the product, as requested in the form.

A product exclusion may be granted with or without the consent of a domestic industry. Such consent may make it easier for the requester to persuade the Tribunal that a product exclusion is warranted; however, it does not ensure that the exclusion will be granted. The decision to grant an exclusion lies with the Tribunal.

A request for exclusion may require the attendance of the requester at the hearing to answer questions from the Tribunal or other parties. Accordingly, those that wish to make requests for product exclusions must file a Notice of Participation using Form I, which can be found on the Tribunal's Web site at [www.citt-tcce.gc.ca/forms/index\\_e.asp](http://www.citt-tcce.gc.ca/forms/index_e.asp). A party may be represented by counsel or may act on its own behalf.

Requesters are encouraged to make their requests using the "Product Exclusion Request Form", a copy of which can be downloaded from the Tribunal's Web site. If requests are made for the exclusion of more than one product, a separate form should be filed for each product. Requests may be made using a different format, provided all the information requested in the form is included. In either case, an electronic copy of the request should also be provided. Requesters may also include more information than is requested. Those requesting an interim review to consider a request to exclude a product from a finding or an order should include the completed form along with the other information described in the Tribunal's *Guideline on Interim Reviews*. The Tribunal determines if an interim review is warranted in light of the request for exclusion and responses, as well as other submissions that it receives.

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1. R.S.C. 1985, c. S-15.

2. See the Tribunal's *Guideline on Interim Reviews* at [www.citt-tcce.gc.ca/publicat/IntRev\\_e.asp](http://www.citt-tcce.gc.ca/publicat/IntRev_e.asp).

The filing of the completed exclusion request form, along with supporting information, does not guarantee in any way that the Tribunal will grant an exclusion. Moreover, the Tribunal may request that further information be provided.

The deadlines for the filing of a request for product exclusion, the responses to requests and any replies by the requester are set out in the Tribunal's notice of inquiry or notice of expiry review for each particular case. These case-specific notices are available on the Tribunal's Web site. In the case of requests for interim reviews to exclude a product, the deadlines for filing the responses and replies are established in accordance with the *Guideline on Interim Reviews*. Requests for product exclusions are circulated to all parties in the inquiry or review. Any party that wishes to oppose a request for product exclusion must file a response. If domestic producers consent to or do not oppose the request, they should inform the Tribunal in writing. If they are opposed to the request for product exclusion in whole or in part, they should complete the "Response to a Request for Product Exclusion Form" which can also be downloaded from the Tribunal's Web site. They may use another format, but must provide all the information and evidence requested in the form. In either case, an electronic copy of the request should also be provided. Responses by opposing parties are circulated to all parties, including the requester.

If the request, the response or any reply by the requester contains *confidential* information, it should be so designated and be accompanied by a public summary in sufficient detail to convey a reasonable understanding of the substance of the information.<sup>3</sup>

Requests for product exclusions, responses to requests and any replies by requesters should be addressed to the Secretary who will also be prepared to answer any questions about this guide and the accompanying forms.

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Standard Life Centre  
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15th Floor  
Ottawa, Ontario  
K1A 0G7  
  
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3. For more information, see section 46 of the *Canadian International Trade Tribunal Act* (Designation of information as confidential), rule 15 of the *Canadian International Trade Tribunal Rules* and the Tribunal's *Procedural Guidelines for the Designation and Use of Confidential Information in Canadian International Trade Tribunal Proceedings* ([www.citt-tcce.gc.ca/publicat/ConInf\\_e.asp](http://www.citt-tcce.gc.ca/publicat/ConInf_e.asp)).