



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Anti-dumping Injury Inquiries

A DESCRIPTIVE GUIDE

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ANTI-DUMPING INJURY INQUIRIES: A DESCRIPTIVE GUIDE

INTRODUCTION

Canada is a trading nation. Our nation's economic prosperity, and that of Canadian producers, depends on secure access to key export markets and a reliable stream of competitively priced imports from markets around the world. That is why Canada has been a long-standing proponent of international trade rules that level the global playing field and ensure that Canadian producers can trade on terms that are not only free but also fair.

Trade terms that are free promote healthy global competition. Trade terms that are fair seek to ensure that unfair trading practices do not harm Canadian producers by undermining their access to global markets or threatening their survival at home.

The Canadian International Trade Tribunal (the Tribunal) is at the forefront of Canada's efforts to balance free and fair trade. The Tribunal is jointly responsible for administering Canada's domestic law governing unfair trading practices—the *Special Import Measures Act (SIMA)*—with an administrative arm of government, the Canada Border Services Agency (CBSA). *SIMA* reflects international trade rules set out by the World Trade Organization and international trade agreements to which Canada has agreed, including the *North American Free Trade Agreement*.

Unfair Trading Practices—Dumping and Subsidizing

SIMA is concerned with two unfair trading practices—dumping and subsidizing.

Dumping refers to the trading practice by which foreign manufacturers sell their products in Canada for less than the price at which they sell the same products at home. In some cases, one could argue that dumping is simply an attempt to gain a competitive edge in a foreign market. In reality, however, dumping is far more than that, as it can be used as a predatory trading practice in which foreign manufacturers produce more than required for their home markets and sell a substantial portion of those surplus goods in Canada at unfairly low prices.

Governments, including the Canadian government, offer subsidies to producers for many reasons. This is known as subsidizing. In some cases, subsidies are legitimately fair and within international trade rules. In other cases, subsidies can unfairly distort trade, for example, when subsidies artificially reduce costs for foreign manufacturers so that they can flood Canada with goods at unfairly low prices.

When forced to compete with unfairly low prices, Canadian producers of the same goods either lose sales to dumping and/or subsidizing or have to lower their prices to preserve sales. Either way, dumping and subsidizing can harm Canadian producers by putting them (and the Canadians that they employ) at significant financial risk.

Assessing the Harm of Unfair Trading Practices

As noted, the Tribunal and the CBSA share administration of *SIMA*. Their processes are independent, and decisions are based on different, yet complementary, factors as set out by law.

The CBSA determines if goods are dumped and/or subsidized, while the Tribunal determines if the dumping or subsidizing has harmed (“injured”) Canadian producers or threatens to harm (or threatens to “injure”) them in the future. When the Tribunal finds that Canadian producers have been harmed or are threatened with harm, the CBSA levies duties (known as “anti-dumping” and/or “countervailing” duties) on foreign imports to raise unfairly low prices back to fair levels so that Canadians can continue to compete.

PROCESS

Unfair trade cases do not begin at the Tribunal. In fact, an unfair trade case begins when Canadian producers file a complaint with the CBSA alleging that unfair dumping and/or subsidizing has occurred. It is only after the CBSA decides to initiate a case that the Tribunal gets involved.

The CBSA and Tribunal divide their work in unfair trade cases into two phases: preliminary investigations and final investigations. These investigations take place alongside each other over a seven-month period and according to strict legislated time frames. In the event that either the CBSA or Tribunal reaches a “negative” determination at any point along the way, the entire case is terminated immediately. For information on the detailed steps in the process, see the [Preliminary and Final Injury Inquiry Guidelines](#).

Three Tribunal Members are assigned to adjudicate each unfair trade case.

Tribunal’s Preliminary Injury Inquiry

The Tribunal’s preliminary injury inquiry lasts only 60 days. Given the short time frame, the Tribunal relies largely on information provided to it by the CBSA and written submissions from parties. Sometimes, the Tribunal issues focused questionnaires or holds a one-day hearing to deal with specific legal issues.

On the basis of the information that it receives, the Tribunal must decide whether the evidence discloses a “*reasonable indication*” that Canadian producers have been harmed or are threatened with harm from dumped or subsidized goods. While *SIMA* does not define “reasonable indication”, the Tribunal considers whether the information before it is relevant, accurate and adequate. Put another way, the Tribunal considers whether the Canadian producers’ allegations stand up to a somewhat probing examination, even if their theory of the case might not seem convincing or compelling.

Tribunal’s Final Injury Inquiry

The Tribunal’s final injury inquiry lasts 120 days and has two phases: the investigation phase in which information is collected and the adjudication phase in which the information is evaluated and decisions are made.

During the investigation phase, staff of the Canadian International Trade Tribunal Secretariat of the Administrative Tribunals Support Service of Canada designs questionnaires to collect information from all the relevant market players: foreign and domestic producers, importers, distributors and retailers. Questionnaires are designed to gauge the size of the overall market, and the market share, sales volume and pricing of each player. The data gathered by the questionnaires are compiled in a report—known as the “Investigation Report”—which is then distributed to all parties in the case.

During the adjudication phase, parties submit evidence in support of their positions. Their evidence is often supported by legal arguments and testimony of witnesses. This evidence is presented during an oral hearing and tested as parties and Tribunal Members question witnesses and legal counsel.

On the basis of the evidence received and testimony heard, the Tribunal decides if the dumped and/or subsidized goods have caused harm or are threatening to cause harm to Canadian producers. *SIMA* does not define how much harm the dumped and/or subsidized goods must cause Canadian producers, but the Tribunal looks for harm that is more than just minimal. The Tribunal reaches this decision by assessing the degree to which the dumped and/or subsidized goods have affected, or could affect, the performance of Canadian producers in terms of their levels of production, sales, market share, profit, employment, etc.

The Tribunal may also consider whether to exclude certain products from its decision if and when it is convinced that those imports will not harm Canadian producers. For more information on product exclusions, see the [Guideline to Making Requests for Product Exclusions](#).

According to *SIMA*, the Tribunal must issue its decision by day 120 of the final injury inquiry and reasons explaining its decision within another 15 days.

If the Tribunal finds that Canadian producers have indeed been harmed or are threatened with harm, the CBSA will impose anti-dumping and/or countervailing duties on the foreign goods. These duties will remain in place for five years.

WHAT ELSE HAPPENS?

The Tribunal handles other types of cases as part of its unfair trade mandate.

Public Interest Inquiries

Once anti-dumping and/or countervailing duties are in place, the Tribunal may decide to investigate whether they are in the broader public interest if they appear to negatively impact downstream users of the goods and/or consumers. Public interest inquiries can be initiated by the Tribunal itself or upon request from an interested party.

Public interest inquiries do not happen often; the Tribunal will not initiate a public interest inquiry if the only argument from an interested party is that the dumped and/or subsidized goods cost more than before. In fact, the Tribunal expects that the imposition of anti-dumping and/or countervailing duties will restore the prices of unfairly traded goods to fair levels. For more information, see the [Public Interest Inquiry Guidelines](#).

At the conclusion of a public interest inquiry, the Tribunal may recommend to the Minister of Finance that the duties should be reduced in part or in full to balance competing interests between domestic producers and the downstream users and/or consumers of the foreign goods.

Interim Reviews

The Tribunal may also review the need for duties while they remain in effect (i.e. before the five years have expired). This type of inquiry is known as an “interim review”.

The Tribunal can initiate an interim review on its own or at the request of an interested party. Parties might request an interim review to exclude particular goods that they want to import because they are not available in Canada or if they believe that duties are no longer needed because Canadian producers have gone out of business.

Although the issues in each interim review are specific to the case, the key question before the Tribunal is whether an amendment to the range of goods covered by anti-dumping and/or countervailing duties would harm Canadian producers. If the answer to that question is yes, the Tribunal will make no changes to the duties, and they will remain in place for the remainder of the five years. For more information, see the [Guidelines on Interim Reviews](#).

Expiry Reviews

Anti-dumping and/or countervailing duties expire after five years unless the Tribunal conducts an inquiry to determine whether the duties are still needed to protect Canadian producers from harm. This type of inquiry is known as an “expiry review”. For more information, see the [Expiry Review Guidelines](#).

Expiry reviews are decided in much the same manner as an unfair trade case (as explained above). They are shared between the Tribunal and the CBSA and, for the Tribunal, include a preliminary and final inquiry.

The Tribunal’s preliminary inquiry in an expiry review starts at least 2 months before duties are set to expire. The Tribunal will consider evidence and arguments from interested parties to determine whether an

expiry review is warranted, i.e. whether there is a reasonable indication that the expiry of the duties will harm Canadian producers in the short to medium term.

If the Tribunal decides that an expiry review is warranted, the CBSA has 150 days to determine whether the expiry of the duties is likely to result in the continuation or resumption of dumping and/or subsidizing. Once the CBSA determines that such likelihood exists, the Tribunal has approximately 160 days to conduct its final inquiry to determine whether the expiry of the duties is likely harm Canadian producers.

SIMA guides the Tribunal in its decision about whether duties should remain in place. First the Tribunal looks at what has changed in the international and domestic markets over the past five years. Then, the Tribunal considers how Canadian producers will likely fare if the duties were to stay in place. Finally, the Tribunal analyzes what would happen if the duties were not in place, in particular, how dumped and/or subsidized imports would affect the performance of Canadian producers in the future.

If the Tribunal decides that removing the duties is likely to harm Canadian producers, the duties will remain in place for another five years.

MORE INFORMATION

If you have questions about the Tribunal, questions about specific cases, or would like information on how to file cases, please contact the Registrar:

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