



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Guidelines

PRELIMINARY AND
FINAL INJURY INQUIRY

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PRELIMINARY AND FINAL INJURY INQUIRY GUIDELINES

INTRODUCTION

These guidelines set out the general approach of the Canadian International Trade Tribunal (Tribunal) regarding the conduct of both a preliminary injury inquiry and a final injury inquiry, under the *Special Import Measures Act (SIMA)*.¹ These guidelines concentrate on the roles and responsibilities of the Tribunal in an injury inquiry, and provide an overview of the key milestones in a dumping and/or subsidizing investigation conducted by the Canada Border Services Agency (CBSA).

SIMA provides domestic producers with recourse against dumped and subsidized imports. Under *SIMA*, domestic producers can file a dumping and/or subsidizing complaint with the CBSA. If the CBSA initiates a dumping and/or subsidizing investigation, the Tribunal must inquire into whether the dumping and/or subsidizing have caused or threaten to cause material injury to a domestic industry, or have caused material retardation of the establishment of a domestic industry. A final injury inquiry may result in the imposition of anti-dumping duties on the dumped imports and/or countervailing duty on the subsidized imports.

The conduct of an injury inquiry is divided into two distinct phases, both of which are conducted according to statutory deadlines set out in *SIMA*.

1. In the **preliminary injury inquiry phase**, the Tribunal is required, pursuant to subsection 34(2) of *SIMA*, to issue a notice of commencement of preliminary injury inquiry if the CBSA initiates a dumping and/or subsidizing investigation in response to a properly documented complaint. During this phase of an injury inquiry, the Tribunal has 60 days to receive submissions from interested persons² and governments, and to decide whether the evidence discloses a reasonable indication of injury or retardation or threat of injury caused by the alleged injurious dumping and/or subsidizing of imports. If the Tribunal finds that there is no reasonable indication of injury or retardation and threat of injury, it issues a decision to that effect as well as reasons for its decision, and the proceedings, including the CBSA's dumping and/or subsidizing investigation, are terminated.

If the Tribunal finds that there is a reasonable indication of injury or retardation or threat of injury, it issues a decision to that effect as well as reasons, and the CBSA has an additional 30 to 75 days to either make a preliminary determination of dumping and/or subsidizing and impose provisional duties on the goods, or terminate its investigation and, thereby, the Tribunal's injury inquiry.

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1. These guidelines do not supplant the provisions of *SIMA* or those of any other relevant acts or regulations, such as the *Special Import Measures Regulations (Regulations)*, the *Canadian International Trade Tribunal Act (CITT Act)* and the *Canadian International Trade Tribunal Rules (CITT Rules)*. They are not a binding statement of how the Tribunal's discretion will be exercised in a particular situation. They are meant to provide guidance to stakeholders when dealing with an injury inquiry before the Tribunal by providing a brief description of the basic procedures that the Tribunal would ordinarily follow. The Tribunal may vary these procedures if it considers it appropriate in the circumstances of an individual case.
 2. Under subsection 2(1) of *SIMA*, a "person" includes a partnership and an association. Under section 35 of the federal *Interpretation Act*, a "person" includes a corporation.

2. In the **final injury inquiry phase**, the Tribunal is required, pursuant to section 42 of *SIMA*, to issue a notice of commencement of inquiry if the CBSA makes a preliminary determination of dumping and/or subsidizing. During this phase of an injury inquiry, the Tribunal has 120 days to determine whether the dumping and/or subsidizing of imports have caused injury or retardation or are threatening to cause injury.

See Appendix 1 for a preliminary and final injury inquiry flowchart. For additional information on the CBSA's roles, responsibilities and procedures, refer to its *Guidelines for Preparing a Dumping or Subsidizing Complaint* found at www.cbsa-asfc.gc.ca/sima-lmsi/complaint-plainte-eng.html and its *Statement of Administrative Practices for the Special Import Measures Act* found at [/www.cbsa-asfc.gc.ca/sima-lmsi/ap-pa-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/ap-pa-eng.html).

PRELIMINARY INJURY INQUIRY

Properly Documented Complaint and the CBSA's Initiation of an Investigation

Upon receipt of a properly documented complaint, the CBSA ordinarily has 30 days to determine if there is evidence that imported goods are being dumped and/or subsidized, and if there is a reasonable indication that the alleged dumping³ and/or subsidizing⁴ of imports have caused injury or retardation⁵ or are threatening to cause injury. This is the only portion of the proceedings where the CBSA will consider the issue of injury. If the CBSA is of the opinion that the complaint contains sufficient evidence of all of these elements, the CBSA initiates a dumping and/or subsidizing investigation, which is conducted concurrently with the Tribunal's preliminary injury inquiry.

If the CBSA is of the opinion that the evidence does not disclose evidence of dumping and/or subsidizing or a reasonable indication of resulting injury or retardation and, consequently, does not initiate a dumping and/or subsidizing investigation, it issues a decision to that effect, with reasons to follow 15 days later. Such a decision precludes any further action by the CBSA or the Tribunal with respect to the complaint. This decision is subject to judicial review by the Federal Court.

Notice of Preliminary Injury Inquiry and Transfer of Information Compiled by the CBSA

Upon receipt from the CBSA of a notice of initiation of dumping and/or subsidizing investigation and of the information relied on by the CBSA to decide whether to initiate the investigation, the Tribunal is required, pursuant to subsection 34(2) of *SIMA*, to commence a preliminary injury inquiry by issuing a notice of commencement of preliminary injury inquiry.

The notice of commencement of preliminary injury inquiry is published in the *Canada Gazette* and sent to the CBSA. Notice is provided to the complainants, all known importers, exporters, foreign producers, foreign governments concerned, any trade association known to have a particular interest in the preliminary injury inquiry or trade unions that represent persons employed in the domestic industry. The Tribunal also posts the notice of commencement of preliminary injury inquiry and the schedule of events on its Web site.

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3. Dumping occurs when the export price of goods is lower than their normal value, i.e. generally either the domestic selling price of comparable goods in the country of export, or the constructed cost of production of the goods exported to Canada.
 4. Subsidizing occurs when goods imported into Canada benefit from foreign government financial contributions. Examples of subsidies include loans at preferential rates, grants and tax incentives.
 5. Subsection 2(1) of *SIMA* defines retardation as material retardation of the establishment of a domestic industry.

The notice of commencement of preliminary injury inquiry outlines the procedures to follow and gives direction on the issues that interested persons and governments should address in their submissions to the Tribunal. The notice of commencement of preliminary injury inquiry also sets out the information prescribed by rule 52.2 of the *CITT Rules* and provided in Appendix 2.

Schedule for Preliminary Injury Inquiry

The following table provides an indicative schedule of key events in a preliminary injury inquiry. While the only statutory deadline is the issuance of a preliminary determination of injury, the Tribunal endeavours to strictly adhere to the established schedule for all other key events in order to be able to make its decision on Day 60 of a preliminary injury inquiry, as prescribed by *SIMA*.

Day	Key Event
0	Issuance by the CBSA of its notice of initiation of preliminary dumping and/or subsidizing investigation Transfer to the Tribunal of information compiled by the CBSA
1	Issuance of the Tribunal's notice of commencement of preliminary injury inquiry and schedule of events
13	Notices of participation and representation, and declarations and undertakings of confidentiality
14	Distribution of the list of participants
18	Distribution of information received from the CBSA
28	Submissions from parties that oppose the complaint
35	Reply submissions from the complainants and other parties that support the complaint
60	Issuance of Tribunal's preliminary determination of injury
75	Issuance of Tribunal's reasons for preliminary determination of injury

Notices of Participation and Representation, and Declarations and Undertakings of Confidentiality

Any person or government wishing to participate as a party in a preliminary injury inquiry must file *Form I – Notice of Participation (Party)* with the Tribunal on or before the date set out in the schedule. Each counsel who intends to represent a party in a preliminary injury inquiry must file *Form II – Notice of Representation (Counsel)* and, to obtain access to confidential information, must also file *Form III – Declaration and Undertaking (Counsel and Consultant)* with the Tribunal on or before the date set out in the schedule. These forms are found on the Tribunal's Web site at www.citt-tce.gc.ca/en/forms. Shortly after the deadline for the filing of notices of participation, the Tribunal distributes the list of participants to all parties who have filed the requisite notices.

A party is not required to be represented by counsel; however, only a counsel is able to obtain disclosure of any confidential information on the record. The Tribunal ensures that a public version of any confidential information is available to parties not represented by counsel. For *SIMA* purposes, "counsel", in relation to a party to the proceedings, includes any person, other than a director, servant or employee of a party, who acts in the proceedings on behalf of the party. Thus, counsel need not be a lawyer.

Distribution of Information Received From the CBSA

On or about Day 18, the Tribunal distributes the public and confidential information received from the CBSA to counsel of record. Non-represented parties will receive only the public information. The CBSA's information consists of:

- the public and confidential complaint;
- the CBSA's confidential analysis of the complaint; and
- other relevant information collected from various sources.

Written Submissions by Parties

On or about Day 28, or about 10 days after receiving the information compiled by the CBSA, parties opposed to the complaint, such as importers, exporters, foreign producers, foreign governments concerned and interested trade associations, are given the opportunity to file submissions with the Tribunal. All submissions must be filed in writing.

Although there are no rules governing the form and content of submissions, they should include evidence, e.g. documents and sources that support the factual statements contained in the submissions, and argument concerning the questions of:

- whether there are goods produced in Canada, other than those identified in the CBSA's reasons for initiating a dumping and/or subsidizing investigation, that are like goods in relation to the allegedly dumped and/or subsidized goods;
- whether the subject goods comprise more than one class of goods;
- which domestic producers of like goods comprise the domestic industry; and
- whether the information before the Tribunal discloses a reasonable indication that the alleged dumping and/or subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury.

Parties should endeavour to base their submissions exclusively on public information. However, if parties file confidential information with the Tribunal, they must provide a public summary or redacted version of that confidential information and comply with the requirements of subsection 46(1) of the *CITT Act*. Further information regarding the treatment of confidential information in proceedings before the Tribunal can be found in the Tribunal's *Confidentiality Guidelines* on its Web site at www.citt-tcce.gc.ca/en/Confidentiality_guidelines_e.

On or about Day 35, or about one week after the receipt of submissions from parties opposed to the complaint, the complainants and other parties in support of the complaint are given the opportunity to reply to the written submissions filed by parties opposed to the complaint. Absent exceptional circumstances, the Tribunal will not accept any further reply submissions following the filing deadline.

Counsel and parties are required to serve their respective submissions on each other on the dates set by the Tribunal. Detailed instructions regarding the service of the public and confidential submissions are provided in the notice of commencement of preliminary injury inquiry.

It is not the Tribunal's practice to have an oral hearing during a preliminary injury inquiry.

Tribunal's Preliminary Injury Determination and Statement of Reasons

On Day 60, on the basis of information transferred to the Tribunal by the CBSA as well as submissions and reply submissions received from parties, the Tribunal determines whether there is a reasonable indication of injury or retardation or threat of injury caused by the alleged injurious dumping and/or subsidizing of imports. On Day 75, the Tribunal issues the reasons for its decision.

CBSA's Preliminary Determination of Dumping and/or Subsidizing

Generally, the CBSA is required to make its preliminary determination on Day 90 from its notice of initiation of dumping and/or subsidizing investigation (or 30 days after the Tribunal's affirmative preliminary injury determination). However, in an investigation where the circumstances are particularly complex, *SIMA* provides that the 90-day deadline may be extended up to 135 days.

If making an affirmative preliminary determination, the CBSA must estimate the margins of dumping and/or amounts of subsidy applicable to the goods, and decide whether the imposition of provisional duties is warranted. If the CBSA determines that the margins of dumping or amounts of subsidy for imported goods from an exporter are insignificant,⁶ no provisional duties are imposed. The CBSA terminates a dumping or subsidizing investigation if it determines that the actual and potential volume of goods of a country is negligible.⁷

The CBSA's preliminary determination of dumping and/or subsidizing includes, for each exporter, the estimated margin of dumping and/or amount of subsidy, the amount of any provisional anti-dumping and/or countervailing duties imposed, as well as the volume and value of imports from each country of export. When the CBSA issues its preliminary determination, it transfers a copy of its record to the Tribunal at the same time.

The CBSA issues reasons for its preliminary determination 15 days after it is rendered.

FINAL INJURY INQUIRY

The Tribunal's final injury inquiry commences by way of a notice of commencement of inquiry issued the day following receipt from the CBSA of its preliminary determination of dumping and/or subsidizing.

The notice of commencement of inquiry is published in the *Canada Gazette* and sent to the CBSA. Notice is also sent to the complainants, parties and counsel of record in the preliminary injury inquiry, all known importers, exporters, foreign producers, foreign governments concerned, any trade association known to have a particular interest in the injury inquiry and any trade union representing persons employed in the domestic industry. The Tribunal also posts the notice of commencement of inquiry and the schedule of events on its Web site.

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6. A margin of dumping of less than 2 percent of the export price and an amount of subsidy of less than 1 percent of the export price are normally considered insignificant.
 7. In a dumping investigation, the volume of dumped goods from a country is considered negligible if it is less than 3 percent of the total volume of like goods exported to Canada from all countries. However, where the total volume of dumped goods from at least three countries, each of whose exports are considered negligible, is more than 7 percent of the total volume of exports to Canada from all countries, the volume of goods from each of those countries is not considered negligible.

Notice of Commencement of Inquiry

The notice briefly describes the Tribunal's role and responsibilities in the conduct of a final injury inquiry. Detailed information on the contents of a notice, as prescribed by rule 54 of the *CITT Rules*, is found in Appendix 3.

Upon commencing a final injury inquiry, the Tribunal transfers the official record of the preliminary injury inquiry to the official record of the final injury inquiry.

The Tribunal has 120 days to complete a final injury inquiry and issue a finding as to whether the dumping and/or subsidizing of imports have caused or are threatening to cause material injury to a domestic industry, or have caused material retardation of the establishment of a domestic industry.

Schedule for Final Injury Inquiry

The following table provides an indicative schedule of the key events in a final injury inquiry. While most of these deadlines are not statutorily mandated, the Tribunal is required, under section 42 of *SIMA*, to issue its decision no later than Day 120. Non-statutory deadlines can be modified slightly and key events, such as the request for submissions on like goods and classes of goods, can be added to the schedule, if the circumstances warrant it, as long as statutory deadlines are met.

Day	Key Event
0	Receipt of the CBSA's preliminary determination of dumping and/or subsidizing, and related information
1	Issuance of the Tribunal's notice of commencement of inquiry and schedule of events Posting of Tribunal questionnaires on its Web site
15	Notices of participation and representation, and declarations and undertakings of confidentiality
22	Replies to the Tribunal questionnaires
50	Distribution of Tribunal's official record including questionnaire replies, Tribunal's investigation report and the list of participants
50-73	Requests for information (RFIs) and objections to RFIs, issuance of Tribunal's directions and receipt of RFI replies
57-73	Requests for product exclusions, domestic producers' responses and requesters' replies to domestic producers' responses
58	Cases of parties that support a finding of injury
66	Cases of parties that oppose a finding of injury
74	Reply submissions of parties that support a finding of injury
90	Commencement of oral hearing Issuance of the CBSA's final determination of dumping and/or subsidizing, and related information
120	Issuance of Tribunal's finding
135	Issuance of Tribunal's statement of reasons

Notices of Participation and Representation, and Declarations and Undertakings of Confidentiality

Any person or government wishing to participate as a party in a final injury inquiry must file *Form I – Notice of Participation (Party)* with the Tribunal on or before the date set out in the schedule. Each counsel who intends to represent a party in a final injury inquiry must file *Form II – Notice of Representation (Counsel)* and, to obtain access to confidential information, must also file *Form III – Declaration and Undertaking (Counsel and Consultant)* with the Tribunal, on or before the date set out in the schedule.

A party who filed *Form I – Notice of Participation (Party)* and who did not engage counsel during the preliminary injury inquiry and wishes to participate in the Tribunal's final injury inquiry must give notice to the Tribunal in writing by filing a *Form I – Notice of Participation (Party)* that applies to the final injury inquiry. Counsel who filed a *Form II – Notice of Representation (Counsel)* and a *Form III – Declaration and Undertaking (Counsel and Consultant)* in the preliminary injury inquiry and who continue to represent the same party in the Tribunal's final injury inquiry, must file *Form VI – Extended Declaration and Undertaking*. These forms are found on the Tribunal's Web site at www.citt-tcce.gc.ca/en/forms.

Questionnaires

On Day 1, at the same time as the Tribunal issues its notice of commencement of inquiry, it posts on its Web site, at www.citt-tcce.gc.ca/en/questionnaires, questionnaires to be completed by domestic producers, importers, foreign producers, purchasers and trading companies on or before the date set out in the schedule. In a final injury inquiry pertaining to subsidized goods, the governments of the countries of export may also be asked to reply to a questionnaire. In these questionnaires, the Tribunal requests public and confidential information that covers the last three full calendar years of commercial activities and any interim periods in the year of the final injury inquiry. These questionnaires generally seek information on the volume and value of imports, domestic sales and exports, and the financial results of domestic producers. Purchasers of the goods are also asked to compare the imported goods with similar domestic goods in terms of price, quality, methods of distribution, etc.

The content of the questionnaires follows a general pattern but is subject to modifications on a case-by-case basis. Prior to posting the questionnaires on its Web site, the Tribunal ordinarily provides an opportunity for parties and counsel to comment on the content of the questionnaires.

Respondents have approximately three weeks to complete their questionnaires.

Tribunal's Investigation Report

The Tribunal prepares an investigation report (public and confidential) based on the information it has collected in the responses to the questionnaires and other relevant information on the record. The report forms part of the record and is distributed to parties and counsel.

Distribution of Tribunal's Record

On or about Day 50, the Tribunal distributes the public record to those parties who are not represented by counsel. The public and confidential information of record is provided to counsel who have filed *Form III – Declaration and Undertaking (Counsel and Consultant)* and who have been provided access to the confidential record.

On the distribution date, the information on the Tribunal's official record consists of:

- the CBSA's preliminary determination of dumping and/or subsidizing, and related information;
- the Tribunal's official record from the preliminary injury inquiry;
- replies to Tribunal questionnaires;
- the public and confidential investigation reports; and
- other information collected from various sources.

Requests for Information

From approximately Day 50 to Day 73, the Tribunal carries out its RFI process for parties and counsel who demonstrate that they have a compelling need for supplementary information or relevant documents. The purpose of the RFI process is to facilitate the early exchange of information and documents so as to expedite the oral hearing process. Parties and counsel serve a copy of their RFIs on the Tribunal and on each other, providing an explanation as to why the information or documents sought are relevant in the proceedings. If a party objects to providing a response to an RFI, it must communicate the objection and an explanation for it in writing to the Tribunal, with copies to all other counsel and parties. The Tribunal then reviews all submitted RFIs and objections and provides directions to the parties and counsel as to which requests require a response.

As part of its RFI process, the Tribunal may direct parties to reply to Tribunal RFIs.

Requests for Product Exclusions

From approximately Day 57 to Day 73, the Tribunal carries out a product exclusion process. The Tribunal has the discretion to exclude products that would otherwise be subject to a finding of injury, retardation or threat of injury. If the Tribunal grants product exclusions, these products are not subject to anti-dumping and/or countervailing duties.

The Tribunal may exclude goods either on its own initiative or at the request of a party, but only if such exclusions will not cause or do not threaten to cause injury to the domestic industry. An example of a circumstance where such an exclusion would be granted is when there is no domestic production of like goods.

The product exclusion process allows for the filing of requests for product exclusions, responses by the domestic industry to such requests and final replies from parties filing the requests for product exclusions.

The Tribunal's *Guide to Making Requests for Product Exclusions* is found on its Web site at www.citt-tcce.gc.ca/en/g_excl_e. You can also find on the Tribunal's Web site, at www.citt-tcce.gc.ca/en/forms, the *Product Exclusion Request Form* for the use of the requester when filing a product exclusion request, the *Domestic Producer Response to Product Exclusion Request Form* for the use of the domestic industry when responding to such request and the *Requester Reply to Domestic Producer Response Form* for the use of the requester when replying to the domestic industry's response. Parties are not required to use these forms: submissions can be made in a different format, provided the parties submit all the information and supporting documentation requested in the forms.

Written Case Briefs or Submissions

From approximately Day 58 to Day 74, parties and counsel are given the opportunity to submit, in writing, case briefs or submissions, and witness statements in support of, or in opposition to, a finding of injury, retardation or threat of injury. If a party intends to call a witness to testify at the hearing, a witness statement must be filed.

Although there are no rules or guidelines governing the form and content of written case briefs, submissions and witness statements, they should be limited to argument and evidence on the impact of dumping and/or subsidizing on the domestic industry. Written submissions typically contain documentary evidence in the form of a written summary of the case to be made at the oral hearing, statements of evidence made by witnesses who will testify at the oral hearing, and exhibits on which parties will rely in their presentation of the evidence.

CBSA's Final Determination of Dumping and/or Subsidizing

Within 90 days of the commencement of the Tribunal's final injury inquiry, the CBSA must complete its dumping and/or subsidizing investigation and make its final determination. If it finds no dumping and no subsidizing, the proceedings are terminated, including the Tribunal's injury inquiry. Otherwise, the Tribunal's final injury inquiry continues and the Tribunal holds an oral hearing.

Oral Hearing

On or about Day 90, following the distribution of the Tribunal's official record and the RFI exchange, the receipt of written case briefs or submissions and witness statements, an oral hearing normally starts. An oral hearing, held before a panel of three members, can consist of both public sessions and, when the information discussed is of a sensitive or confidential nature, in-camera (private) sessions. It is usually held in the Tribunal's premises in Ottawa, Ontario, and can last anywhere from one to five days, depending on the number of participants. An oral hearing gives parties an opportunity to call and cross-examine witnesses and to argue their case before the Tribunal. It also provides the Tribunal with an opportunity to test written submissions and documentary evidence.

Tribunal's Finding and Reasons

On Day 120, the Tribunal issues its finding as to whether the dumping and/or subsidizing of imports, rather than other factors, have caused injury or retardation or are threatening to cause injury. In making its decision, the Tribunal may take into account any of the factors set out in subsections 37.1(1) and 37.1(2) of the *Regulations*, which are found in Appendix 4. In addition, the Tribunal must determine whether the volume of the dumped and/or subsidized goods imported into Canada is negligible; if so, it must terminate its final injury inquiry. The Tribunal issues its reasons for decision 15 days later, on Day 135.

At the end of its final injury inquiry, the Tribunal can issue the findings described below:

Finding of No Injury

If the Tribunal finds that the dumping and subsidizing of imports have not caused injury or retardation and are not threatening to cause injury, it terminates its final injury inquiry. The CBSA refunds to the importers all provisional anti-dumping and countervailing duties collected and returns any security that was posted with the CBSA in lieu of duty payment.

Finding of Injury or Retardation

If the Tribunal finds that the dumping and/or subsidizing of imports have caused injury or retardation, anti-dumping and/or countervailing duties are payable on:

- all dumped and/or subsidized goods imported during the provisional period, i.e. from the date of the CBSA's preliminary determination of dumping and/or subsidizing to the date of the Tribunal's finding; and
- all shipments of the dumped and/or subsidized goods released after the date of the Tribunal's finding, until such time as the finding is rescinded.

However, duties are not payable if the goods are covered by a valid undertaking. Undertakings are commitments made by exporters, or the foreign government in subsidy cases, to adhere to certain conditions which serve to eliminate the harm to domestic producers caused by dumping and/or subsidizing. Undertakings may only be accepted after the CBSA makes a preliminary determination of dumping and/or subsidizing and they generally remain in force for a five-year period. No anti-dumping duties and/or countervailing duties are applicable while valid undertakings are in effect.

The Tribunal may also find that massive importations of dumped and/or subsidized goods have caused injury, in which case retroactive duties may be assessed on goods that were imported in the period starting on the day the CBSA initiated its investigation and ending on the day of its preliminary determination of dumping and/or subsidizing. In case of an extension of the CBSA's investigation, this period cannot exceed the 90-days period prior to the date of the CBSA's preliminary determination of dumping and/or subsidizing.

Finding of Threat of Injury

If the Tribunal finds that the dumping and subsidizing of imports have not caused injury or retardation, but are threatening to cause injury, no anti-dumping and countervailing duties are payable on goods released before the date of the finding. Any provisional duty paid on importations prior to the Tribunal's finding is therefore refunded by the CBSA to the importers together with interest. Any security posted by the importers in lieu of the payment of provisional duty is also refunded. However, duties are payable on all dumped and/or subsidized imports released after the date of the Tribunal's finding except where the goods are covered by a valid undertaking.

Public Interest Inquiry

After a finding of injury, threat of injury or retardation, an interested person may request a public interest inquiry. For additional information, see the Tribunal's *Public Interest Inquiry Guidelines* found on its Web site at www.citt-tcce.gc.ca/en/Public_Interest_Guidelines_e.

Duration and Review of Findings

A finding of injury, threat of injury or retardation generally expires after five years unless it is reviewed by the Tribunal and an order is issued to continue it, with or without amendment, for an additional five years. See the Tribunal's *Expiry Review Guidelines* found on its Web site at www.citt-tcce.gc.ca/en/Expiry_Review_Guidelines_e.

A finding can be rescinded earlier as a result of an interim review conducted by the Tribunal. An interim review may be warranted where, among other things, there is a reasonable indication that sufficient new facts have arisen, or that there has been a sufficient change in the circumstances that led to the finding or order. See the Tribunal's *Interim Review Guidelines* found on its Web site at www.citt-tcce.gc.ca/en/Interim_Review_Guidelines_e.

Judicial Review

Any party may request judicial review by the Federal Court of Appeal of the Tribunal's decision with respect to injury, threat of injury or retardation. Alternatively, parties from the United States, Mexico or Canada may request a binational panel review of the Tribunal's decision under the *North American Free Trade Agreement*. In addition, foreign governments that are members of the World Trade Organization (WTO) may refer certain Tribunal decisions to the WTO's Dispute Settlement Body for review.

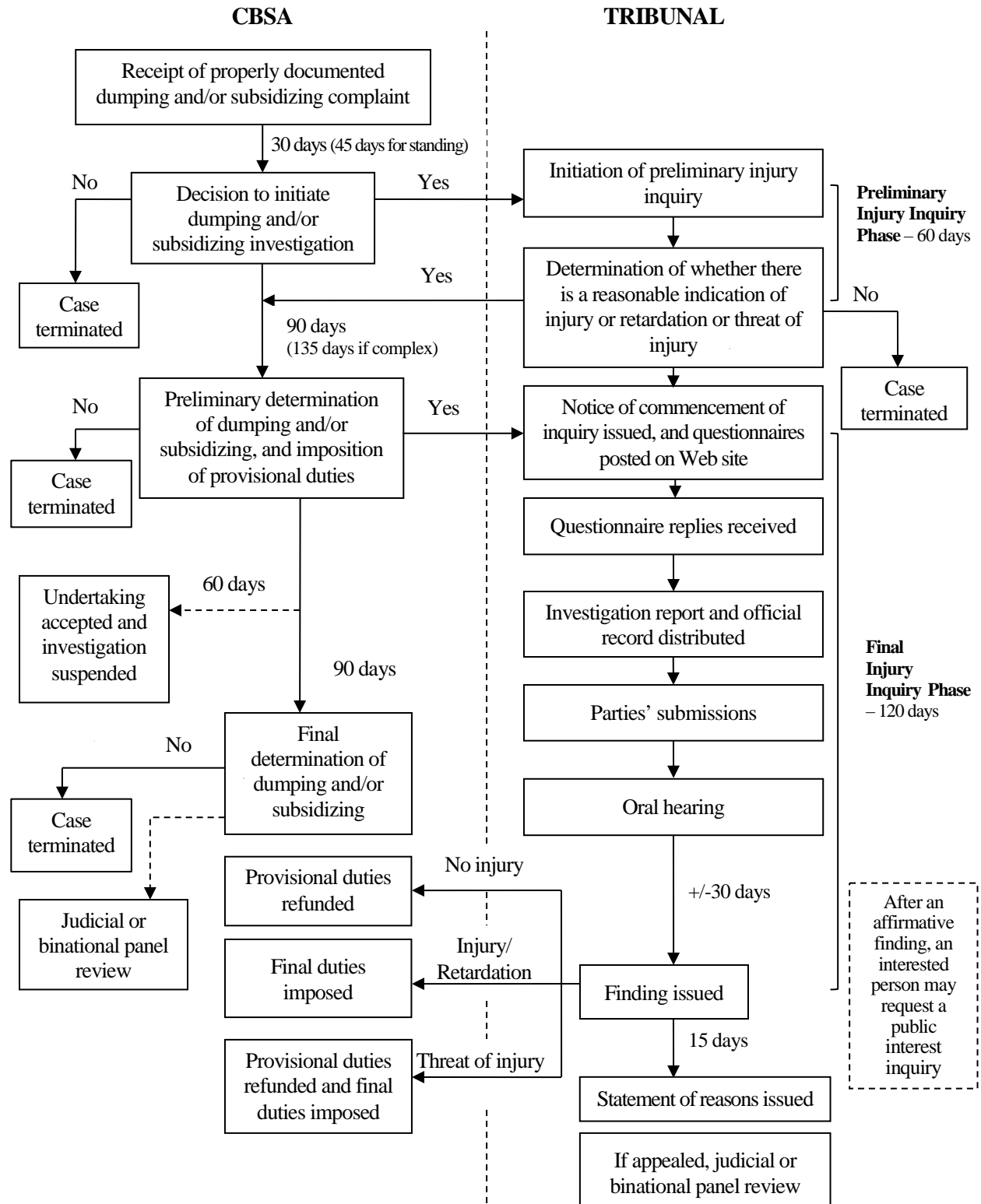
Contacting the Tribunal

Any questions regarding these guidelines or any related matter should be addressed to:

The Registrar
Canadian International Trade Tribunal
15th Floor
333 Laurier Ave W
Ottawa Ontario K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

APPENDIX 1 – INJURY INQUIRY FLOWCHART



**APPENDIX 2 –
INFORMATION CONTAINED IN A NOTICE OF COMMENCEMENT OF
PRELIMINARY INJURY INQUIRY**

Pursuant to rule 52.2 of the *CITT Rules*, the Tribunal's notice of commencement of preliminary injury inquiry shall contain:

- the statutory authority for the preliminary injury inquiry;
- the subject matter of the preliminary injury inquiry;
- the last date for an interested party to file a notice of participation;
- the last date for counsel for an interested party to file a notice of representation and, if appropriate, a declaration and undertaking of confidentiality;
- the last date for parties and counsel to file any written submissions;
- instructions with respect to the filing of confidential information;
- the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the preliminary injury inquiry may be obtained; and
- any other information that the Tribunal considers relevant to the preliminary injury inquiry.

**APPENDIX 3 –
INFORMATION CONTAINED IN A NOTICE OF COMMENCEMENT OF
INQUIRY**

Pursuant to rule 54 of the *CITT Rules*, the Tribunal's notice of commencement of inquiry shall contain:

- the statutory authority for the final injury inquiry;
- the subject matter of the final injury inquiry;
- the last date for an interested party to file a notice of participation;
- the last date for counsel for an interested party to file a notice of representation and, if appropriate, a declaration and undertaking of confidentiality;
- the last date for an interested person to file written representations;
- the last date for parties and counsel to file questionnaire replies, written case briefs and submissions;
- instructions with respect to the filing of confidential information;
- the address to which written case briefs, written submissions or correspondence may be sent or delivered and at which information in respect of the final injury inquiry may be obtained;
- the place and time fixed for commencement of an oral hearing in the final injury inquiry; and
- any other information that the Tribunal considers relevant to the final injury inquiry.

APPENDIX 4 – INJURY, RETARDATION AND THREAT OF INJURY FACTORS

Special Import Measures Regulations

- 37.1(1) The following factors may be considered in determining whether the dumping or subsidizing of goods has caused **injury** or **retardation**:
 - (a) the volume of the dumped or subsidized goods and, in particular, whether there has been a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods;
 - (b) the effect of the dumped or subsidized goods on the price of like goods and, in particular, whether the dumped or subsidized goods have significantly
 - (i) undercut the price of like goods,
 - (ii) depressed the price of like goods, or
 - (iii) suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred;
 - (c) the resulting impact of the dumped or subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry, including
 - (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity,
 - (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital,
 - (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and
 - (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme; and
 - (d) any other factor that is relevant in the circumstances.

- 37.1(2) The following factors may be considered in determining whether the dumping or subsidizing of goods **is threatening to cause injury**:
 - (a) the nature of the subsidy in question and the effects it is likely to have on trade;
 - (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods;
 - (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase;
 - (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;
 - (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods;
 - (f) inventories of the goods;
 - (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;
 - (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods;
 - (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and
 - (h) any other factor that is relevant in the circumstances.

- 37.1(3) The following additional factors may be considered in determining whether the dumping or subsidizing of goods has caused **injury** or **retardation** or **is threatening to cause injury**:
 - (a) whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the factors listed in subsections (1) and (2); and
 - (b) whether any factors other than the dumping or subsidizing of the goods have caused injury or retardation or are threatening to cause injury, on the basis of
 - (i) the volumes and prices of imports of like goods that are not dumped or subsidized,
 - (ii) a contraction in demand for the goods or like goods,
 - (iii) any change in the pattern of consumption of the goods or like goods,
 - (iv) trade-restrictive practices of, and competition between, foreign and domestic producers,
 - (v) developments in technology,
 - (vi) the export performance and productivity of the domestic industry in respect of like goods, and
 - (vii) any other factor that is relevant in the circumstances.
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