Canadian International Trade Tribunal

Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Guidelines

PUBLIC INTEREST INQUIRIES

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PUBLIC INTEREST INQUIRY GUIDELINES

INTRODUCTION

These guidelines set out the general approach of the Canadian International Trade Tribunal (Tribunal) regarding the conduct of a public interest inquiry under the *Special Import Measures Act* (*SIMA*).[1]

Under section 45 of *SIMA*, a public interest inquiry can only be conducted after the Tribunal issues a finding of injury, threat of injury or retardation[2] caused by dumped[3] and/or subsidized[4] imports (injury finding), which leads to the imposition of anti-dumping and/or countervailing duties. The purpose of a public interest inquiry is to determine whether the imposition of part or all of those duties may not be in the public interest. The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by what percentage. The Tribunal may choose, either as a result of a properly documented request for a public interest inquiry, or on its own initiative, to conduct a public interest inquiry.

There are two phases in a public interest inquiry:

1. In the **commencement phase**, the Tribunal decides whether there are reasonable grounds to commence a public interest inquiry. If the Tribunal finds that these grounds do not exist, it issues a decision to that effect as well as reasons for its decision, and the proceedings are terminated.

   If the Tribunal finds that there exist reasonable grounds to commence a public interest inquiry, it starts the investigation phase by issuing a notice of commencement of public interest inquiry.

2. In the **investigation phase**, the Tribunal conducts a public interest inquiry and prepares a report containing specific recommendations and supporting facts and reasons for the Minister of Finance, if warranted.

APPENDIX 1 provides a public interest inquiry flowchart.

COMMENCEMENT PHASE

The commencement phase of a public interest inquiry starts when a requester files with the Tribunal a request for the commencement of a public interest inquiry. The requester can be a party to an injury inquiry conducted under section 42 of *SIMA* or any group or person[5] affected by an injury finding made by the Tribunal under subsection 43(1) of *SIMA*.

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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 a public interest 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. Subsection 2(1) of *SIMA* defines "retardation" as material retardation of the establishment of a domestic industry.
3. Dumping occurs when the export price of goods is lower than their normal value, i.e. generally either the domestic or 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. 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.

The Tribunal can also decide, on its own initiative, upon issuing an injury finding, to conduct a public interest inquiry. In such case, the public interest inquiry consists of the investigation phase only.

Filing of a Request for the Commencement of a Public Interest Inquiry

Pursuant to subsection 40.1(1) of the *Regulations*, a request for a public interest inquiry must be filed with the Tribunal within 45 days of the Tribunal issuing an injury finding.

A request for a public interest inquiry should be addressed to the Registrar of the Tribunal and must include the information prescribed by subsection 40.1(2) of the *Regulations* and described in APPENDIX 2.

In a request for a public interest inquiry, the requester must identify the grounds for which it considers that the imposition of anti-dumping and/or countervailing duties, or the imposition of such duties in the full amount, may not be in the public interest, as well as the facts on which those grounds are based.

The requester should endeavour to base its submissions exclusively on public information. However, if it files confidential information with the Tribunal, it 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.

Decision on Whether the Request for a Public Interest Inquiry is Properly Documented

Upon receipt of a request for a public interest inquiry within 45 days of issuing an injury finding, the Tribunal acknowledges receipt of the request and reviews it to determine if it is properly documented and if it complies with the requirements prescribed by subsection 40.1(2) of the *Regulations* and set out in APPENDIX 2.

If the Tribunal determines that the request does not comply with the requirements of subsection 40.1(2) of the *Regulations*, it can either decide not to proceed or, if the prescribed 45-day time period has not expired, can offer the requester the opportunity to fulfill the requirements of the said subsection.

If the Tribunal decides not to proceed given the failure of a requester to file a properly documented request for a public interest inquiry within 45 days of the injury finding, the Tribunal notifies the requester and parties to the injury inquiry in writing, and the proceeding is terminated.

Schedule for the Commencement Phase

The following table provides an indicative schedule of key events in the commencement phase of a public interest inquiry. While the only statutory deadline in this first phase of a public interest inquiry is the receipt of a request for a public interest inquiry within 45 days of the Tribunal issuing an injury finding, the Tribunal endeavours to adhere to the established schedule set out below. However, the Tribunal may modify the schedule if circumstances warrant it.

Day	Key Event
Within 45 days of the date the injury finding is issued	Receipt of a properly documented request for the commencement of a public interest inquiry
1	Notification to the requester, to parties to the injury inquiry and to all those who were sent a copy of the Tribunal's injury finding, of the receipt of a properly documented request for the commencement of a public interest inquiry Posting of the request for a public interest inquiry on the Tribunal's Web site
15	Submissions in support of, or in opposition to, the request for the commencement of a public interest inquiry
25	Reply submissions
35	Issuance of the notice of commencement of public interest inquiry or of the decision not to commence a public interest inquiry
50	Issuance of reasons for decision not to commence a public interest inquiry (if applicable)

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

If the Tribunal decides that a request for the commencement of a public interest inquiry is properly documented, on Day 1 of the commencement phase of a public interest inquiry, it notifies parties to the injury inquiry and all those who were sent a copy of the Tribunal's injury finding and invites them to file submissions in support of, or in opposition to, the properly documented request. A copy of the public, properly documented request is posted on the Tribunal's Web site at www.citt-tcce.gc.ca/en/dumping-and-subsidizing/public-interest-inquiries-section-45/properly-documented-requests. A copy can also be obtained by writing to the Tribunal.

Submissions

Written submissions in reply to a properly documented request for the commencement of a public interest inquiry must address the facts and arguments contained in the request and provide any other information that will assist the Tribunal in forming an opinion as to whether there are reasonable grounds to consider reducing or eliminating anti-dumping and/or countervailing duties and, consequently, commence a public interest inquiry.

Parties to an injury inquiry, or groups or persons affected by the Tribunal's injury finding have approximately two weeks from the date on which the notice of receipt of a properly documented request for a public interest inquiry is posted on the Tribunal's Web site to file their submissions. Those parties, groups or persons should endeavour to base their submissions exclusively on public information. However, if they 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 its *Confidentiality Guidelines* on its Web site at www.citt-tcce.gc.ca/en/Confidentiality_guidelines_e.

Reply Submissions

Where there are opposing views, each party that filed a submission is given an opportunity to respond in writing to the representations of other parties.

Decision on Whether to Commence a Public Interest Inquiry

On or about Day 35 of the commencement phase of a public interest inquiry, on the basis of the information submitted by the requester and submissions filed in support of, or in opposition to, the request and any reply submissions, the Tribunal decides whether there are reasonable grounds to believe that the imposition of anti-dumping and/or countervailing duties, or the imposition of such duties in the full amount, will not or may not be in the public interest.

If the Tribunal decides that there are no reasonable grounds to conclude that the imposition of anti-dumping and/or countervailing duties, or the imposition of such duties in the full amount, will not or may not be in the public interest, it issues a decision to that effect, and reasons for its decision are issued 15 days later. The Tribunal advises the requester, parties to the injury inquiry, and groups and persons affected by the injury finding and any other party that filed submissions. The Tribunal publishes a notice of decision in the *Canada Gazette*, posts its decision on its Web site along with its reasons, and terminates the proceeding.

If the Tribunal decides that there are reasonable grounds to believe that the imposition of anti-dumping and/or countervailing duties, or the imposition of such duties in the full amount, will not or may not be in the public interest, it issues a notice of commencement of public interest inquiry.

INVESTIGATION PHASE

The investigation phase of a public interest inquiry starts when the Tribunal issues a notice of commencement of public interest inquiry. The Tribunal concludes the public interest inquiry when the Tribunal renders its opinion on whether or not a reduction of anti-dumping and/or countervailing duties is in the public interest.

Notice of Commencement of Public Interest Inquiry

A notice of commencement of public interest inquiry briefly summarizes the key events that occurred at the commencement phase that led the Tribunal to conduct a public interest inquiry, and describes the procedures to follow at the investigation phase. The notice presents the factors that the Tribunal reviewed at the commencement phase to arrive at its decision to conduct a public interest inquiry. These factors are listed in subsection 40.1(2) of the *Regulations* and are provided in APPENDIX 2. The notice also sets out the information prescribed by subrule 68.1(1) of the *CITT Rules*, and reproduced in APPENDIX 3, and includes a schedule of key events. The notice is published in the *Canada Gazette* and posted on the Tribunal's Web site. It is also sent to the parties to the injury inquiry, as well as to groups and persons affected by the injury finding.

Factors to be Considered in a Public Interest Inquiry

In conducting a public interest inquiry, the Tribunal must take into account any factor that it considers relevant, including the factors set out in subsection 40.1(3) of the *Regulations* and found in APPENDIX 4.

Schedule for the Investigation Phase

The following table provides an indicative schedule of key events in the investigation phase of a public interest inquiry. While there is no statutory deadline in this phase of a public interest inquiry, the Tribunal endeavours to adhere to the established schedule as set out below. However, the Tribunal may modify the schedule if the circumstances of a particular public interest inquiry warrant it. For example, depending on the complexity of the case, the Tribunal may or may not issue questionnaires or hold an oral hearing; in such cases, the schedule for filing submissions is compressed.

Day	Key Event
1	Issuance of notice of commencement of public interest inquiry and schedule of events Posting of questionnaires on the Tribunal's Web site
21	Notices of participation and representation, and declarations and undertakings of confidentiality
21	Replies to questionnaires
22	Distribution of list of participants
50	Distribution of Tribunal's official record, including questionnaire replies and Tribunal's investigation report
60	Submissions and witness statements of parties that support a reduction or elimination of anti-dumping and/or countervailing duties
70	Submissions and witness statements of parties that support maintaining the anti-dumping and/or countervailing duties in the full amount
80	Reply submissions from parties that support a reduction or elimination of anti-dumping and/or countervailing duties
90	Commencement of oral hearing (if necessary)
100 or 140*	Issuance of Tribunal's report (opinion, facts and reasons) explaining whether a reduction of anti-dumping and/or countervailing duties is in the public interest

* In cases where no questionnaires are issued and no oral hearing is conducted, the schedule for receipt of submissions is compressed and the Tribunal endeavours to issue its report on or about Day 100. In more complex cases, where questionnaires are issued and an oral hearing is held, the Tribunal endeavours to issue its report on or about Day 140.

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

Any person or government wishing to participate as a party in a public interest 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 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. Shortly after the deadline for the filing of notices of participation, the Tribunal will distribute 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 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.

A party who filed *Form I – Notice of Participation (Party)* during the injury inquiry conducted pursuant to section 42 of *SIMA* and wishes to participate in the investigation phase of a public interest inquiry must give notice to the Tribunal in writing by completing a new *Form I – Notice of Participation (Party)* for the public interest inquiry. Counsel who filed a *Form II – Notice of Representation (Counsel)* and a *Form III – Declaration and Undertaking (Counsel and Consultant)* in the injury inquiry, and who continue to represent the same party in the Tribunal's public interest inquiry, must file a *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

In the event that the Tribunal decides to collect information through questionnaires, it posts the questionnaires on its Web site on Day 1. The questionnaires must be completed by domestic producers, importers, foreign producers, foreign governments, trading companies and purchasers. The public and confidential information requested in these questionnaires is specific to the public interest issues relevant to the case. In some cases, prior to finalizing the questionnaires and posting them on its Web site, the Tribunal may give parties and counsel an opportunity to comment on the content of the questionnaires.

Respondents have approximately three weeks to complete the questionnaires.

Tribunal's Investigation Report

In the event that the Tribunal requests information in the form of questionnaires, it prepares public and confidential versions of its investigation report based on the questionnaire replies and other relevant information on the record. The report forms part of the Tribunal's record and is distributed to parties and counsel.

Distribution of Tribunal's Record

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

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

- the properly documented request for the commencement of a public interest inquiry;
- submissions filed in support of, or in opposition to, the properly documented request for the commencement of a public interest inquiry;
- submissions filed in reply;
- all other information filed with the Tribunal during the commencement phase of the public interest inquiry;
- the notice of commencement of public interest inquiry;
- questionnaire replies;
- public and confidential investigation reports;
- public and confidential investigation reports from the prior related injury inquiry;
- the injury finding and statement of reasons of the prior related injury inquiry; and
- other information collected from various sources.

Written Submissions and Reply Submissions

On or about Day 60, parties that support a reduction or elimination of anti-dumping and/or countervailing duties must file their written submissions with the Tribunal. Approximately 10 days later, parties that support maintaining the anti-dumping and/or countervailing duties in the full amount must file their written submissions with the Tribunal. In their submissions, parties are asked to address all the factors that they consider relevant in assisting the Tribunal to arrive at its opinion. They are also asked to address potential duty reduction remedies to be applied if the Tribunal were to be of the opinion that a reduction of anti-dumping and/or countervailing duties would be in the public interest. Parties that support a reduction or elimination of anti-dumping and/or countervailing duties have an opportunity to file reply submissions on or about Day 80.

Oral Hearing

On or about Day 90, the Tribunal may hold an oral hearing to give parties and counsel the opportunity to call and cross-examine witnesses and to argue their position before the Tribunal. An oral hearing also provides the Tribunal the opportunity to test written submissions and reply submissions, documentary evidence, as well as questionnaire replies (if applicable).

Tribunal's Opinion

On or about Day 140 (or on or about Day 100 where the schedule is compressed), the Tribunal issues a report rendering its opinion as to whether a reduction of anti-dumping and/or countervailing duties is in the public interest. In reaching such an opinion, the Tribunal must take into account any factors, including those set out in APPENDIX 4, that it considers relevant. The Tribunal publishes a notice of its report in the *Canada Gazette*, and provides its report to the Minister of Finance and a copy of its report to all parties to the public interest inquiry. The report is also posted on the Tribunal's Web site at www.citt-tcce.gc.ca.

If the Tribunal is of the opinion that a reduction of anti-dumping and/or countervailing duties is not in the public interest, it issues a report outlining why no duty reduction is warranted with supporting reasons.

If the Tribunal is of the opinion that a reduction of anti-dumping and/or countervailing duties is in the public interest, it issues a report to the Minister of Finance containing its opinion and recommendations.

A report to the Minister of Finance contains specific recommendations, with supporting facts and reasons, and indicates either:

- the level of reduction of the anti-dumping and/or countervailing duties; or
- the price or prices that will eliminate the injury, threat of injury or retardation affecting the domestic industry.

After review of the Tribunal's report, the Minister of Finance can either:

- implement the Tribunal's recommendations as formulated or modify them; in either case, a new duty regime is established for the Canada Border Services Agency (CBSA) to administer, and any overpaid anti-dumping and/or countervailing duties are refunded; or
- reject the Tribunal's recommendations and, consequently, anti-dumping and/or countervailing duties continue to be collected.

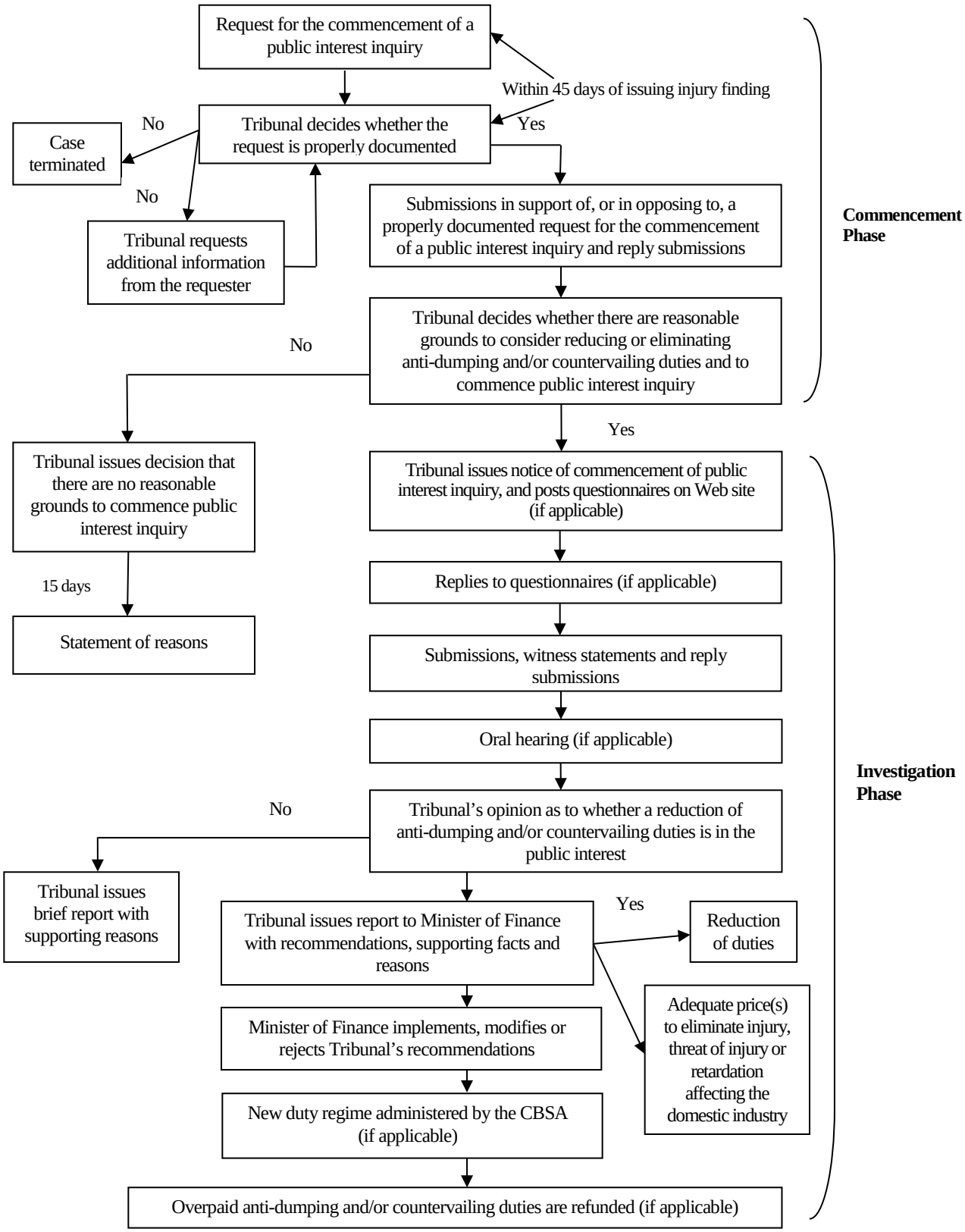
Contacting the Tribunal

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 – PUBLIC INTEREST INQUIRY FLOWCHART



APPENDIX 2 –
INFORMATION TO BE INCLUDED IN A REQUEST FOR THE COMMENCEMENT OF A PUBLIC INTEREST INQUIRY

Pursuant to subsection 40.1(2) of the *Regulations*, a request to the Tribunal to commence a public interest inquiry shall:

1. include (when applicable) the name, address for service, business and mobile telephone numbers, fax number and e-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 anti-dumping and/or countervailing duties, indicating the degree to which it is affected;
3. include sufficient information as to whether the imposition of anti-dumping and/or countervailing duties 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 anti-dumping and/or countervailing duties 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 provide services,
      (iii) competition by limiting access to:
         - goods that are used as inputs to produce other goods and provide 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 anti-dumping and/or countervailing duties 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.

APPENDIX 3 –
INFORMATION IN TRIBUNAL'S NOTICE OF COMMENCEMENT OF PUBLIC INTEREST INQUIRY

Pursuant to subrule 68.1(1) of the *CITT Rules*, the Tribunal's notice of commencement of public interest inquiry shall contain:

1. the statutory authority for the public interest inquiry;
2. the subject matter of the public interest inquiry, together with any other relevant details of the public interest inquiry;
3. the date by which an interested party, group or person must file a notice of participation;
4. the date by which counsel for an interested party, group or person must file a notice of representation and, if appropriate, a declaration and undertaking of confidentiality with the Tribunal;
5. the date by which any written submissions must be filed;
6. instructions with respect to the filing of confidential information;
7. the date, place and time fixed for the commencement of an oral hearing in the public interest inquiry; and
8. any other information the Tribunal deems relevant.

APPENDIX 4 –
FACTORS THAT THE TRIBUNAL MAY CONSIDER IN A PUBLIC INTEREST INQUIRY

In conducting a public interest inquiry, the Tribunal must take into account any factor that it considers relevant, including the following factors prescribed in subsection 40.1(3) of the *Regulations*:

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 the imposition of full anti-dumping and/or countervailing duties has had or is likely to have the following effects:
   - (a) substantially lessen or eliminate 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 anti-dumping and/or countervailing duties is likely to cause significant damage to domestic producers of inputs, including primary commodities, used in the domestic production of like goods.