

What is a Preliminary Injury Inquiry in the Canadian Anti-Dumping/Countervailing Duty Trade Remedies Process?

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What is a preliminary injury inquiry? When the Canada Border Services Agency (“CBSA”) initiates an anti-dumping and/or countervailing duty complaint filed by the domestic industry, the Canadian International Trade Tribunal (“CITT”) is mandated to conduct a preliminary injury inquiry. The CITT considers whether the complaint discloses a reasonable indication of injury. The burden of proof in a preliminary injury inquiry is lower than an injury inquiry. The CITT must render its decision within 60 days of the initiation of the anti-dumping/countervailing duty proceeding by the CBSA. As a result, there is very little time for an importer or a foreign producer to make a decision to get involved in the process and prepare submissions.

A typical timeline for a preliminary injury inquiry is as follows:

Day 1 – Issuance of the Tribunal’s notice of commencement of preliminary injury inquiry and schedule of events

Day 16 – Notices of participation and representation, and declarations and undertakings of confidentiality

Day 17 – Distribution of the list of participants

Day 18 – Distribution of information received from the CBSA

Day 28 – Submissions from parties that oppose to the complaint

Day 35 – Reply submissions from the complainants and other parties that support the complaint

Day 60 – Issuance of Tribunal’s preliminary determination of injury

Day 75 – Issuance of Tribunal’s reasons for preliminary determination of injury (This will happen on Day 80 when like goods/classes of goods conference is held or where a like goods/classes of goods questionnaire is used.)

The CITT has started to consider in the preliminary injury inquiry questions of (1) whether the product description contains more than one class of goods or (2) whether certain goods are not like goods to the subject goods or (3) whether the product description overlaps with another CITT Order. It is of benefit for importers and foreign producers to participate in these discussions as early as possible. It is possible for the CITT to terminate the case with respect to certain goods (see Certain Line Pipe, Certain Grain Corn). It is possible that the CITT will learn about the goods at issue and divide the product description into classes of goods for the purposes of the injury inquiry (see Certain Fasteners). This may be of benefit because in the injury inquiry, the Tribunal may gather separate injury evidence in the questionnaires and may terminate the injury inquiry with respect to certain goods. In the Fasteners case, the CITT divided the Subject Goods into (1) stainless steel screws, (2) carbon steel screws, (3) stainless steel nuts and bolts, and (4) carbon steel nuts and bolts. In the Fasteners case, in the injury decision, the CITT terminated the case with respect to (1) stainless steel nuts and bolts (based on the

injury factors), (2) carbon steel nuts and bolts (based on the injury factors), and (3) stainless steel screws from China (based on *de minimis* threshold).

Based on recent experience, depending on the goods at issue, it is important to get involved in the preliminary injury inquiry in order to help the Tribunal ask the right questions later on in the injury inquiry. When the CITT gets a case, they know very little about the goods in question. The CITT receives the complaint, which the domestic industry has spent months or years preparing. This means the CITT gets a detailed account by the domestic industry that includes their spin on the evidence. If the Tribunal is to learn the true story, it is up to the importers and exporters and foreign producers to come forward and tell their side of the story.

The preliminary injury inquiry presents the first opportunity for the importers and exporters and foreign producers to shed light of the facts. Don't miss the opportunity.

The Tribunal has recently issued a [Practice Notice for Preliminary Injury Inquiries](#).



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