

WORLD TRADE ORGANIZATION

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**Committee on Anti-Dumping Practices
Ad Hoc Group on Implementation**

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TIMELINE, CONFIDENTIAL INFORMATION, AND LESSER DUTY RULE (PARAGRAPH 3 OF WTO/AIR/643)

Information Provided by Canada

The following communication, dated 7 October 1997, has been received from the Permanent Mission of Canada.

A. TIMELINE

The Canadian Anti-Dumping Process

Maximum Time from Initiation ¹		Activity
Varies	Various periods of time before written complaint ²	Initial Contact with Revenue Canada by Domestic Producers (Complainants)
51 days before initiation		Dumping Complaint (written allegations of dumping, injury and causality with supporting data)
30 days before initiation³	Up to 21 days following the receipt of written complaint	Decision whether Complaint Properly Documented (PDC) <ul style="list-style-type: none">- determination of sufficiency of information to evaluate allegations- where complaint is properly documented, foreign government(s) notified

¹For greater clarity, only those activities set out in bold print relate to time limits specified in legislation.

²Not all contacts with Revenue Canada regarding possible dumping complaints result in a formal complaint by the domestic industry.

³Extendible to a maximum of 45 days in order to verify standing requirements (i.e. Article 5.4 of the WTO Anti-Dumping Agreement requirements).

Maximum Time from Initiation		Activity
Day 0	Up to 30 days from PDC ⁴	Decision whether to Initiate an Investigation by Revenue Canada <ul style="list-style-type: none"> - no initiation terminates all proceedings in the case - at initiation; Public Notice, Notice to all interested parties and foreign governments, public Statement of Reasons (SOR); and importer and exporter Requests for Information (RFI)
37 days		- Response to Revenue Canada RFIs due
60-90 days⁵		Revenue Canada Preliminary Determination (PD) of Dumping and Injury or Termination⁶ <ul style="list-style-type: none"> - termination terminates all proceedings in the investigation at PD - public notice and SOR issued along with notice to interested parties and foreign governments: <p>individual exporter letters explain company-specific results of the investigation (i.e. methodologies used to determine normal values and export prices and estimated margins of dumping)</p> <p>the exporter letter is the primary means by which Revenue Canada advises individual exporters of the <u>essential facts under consideration</u> for purposes of the final determination of dumping in respect of that individual exporter</p> <p>the SOR will explain the essential facts in a general, non-confidential manner</p> - interested parties advised that they may request disclosure meetings with Revenue Canada⁷ - imposition of provisional duties and/or posting of securities, where required
60-90 days		Initiation of Injury Inquiry by the Canadian International Trade Tribunal (Tribunal) <ul style="list-style-type: none"> - Tribunal assumes responsibility over injury, initiating an injury inquiry (to be completed in 120 days) upon receipt of the notice of the PD, normally the same day - Tribunal injury questionnaires sent to domestic manufacturers, importers and purchasers
111 days	21 days after PD	Response to Tribunal injury questionnaires due

⁴This decision whether to initiate an investigation or not to initiate an investigation because of a lack of evidence of injury may be reviewed by the Canadian International Trade Tribunal (the Tribunal) on the question of injury if such a review is requested by an interested party. Revenue Canada may also refer the question of injury to the Tribunal at this time. When such a referral is made, the Tribunal has 30 days to render advice on whether the information on injury before Revenue Canada was sufficient to warrant the initiation of the investigation. If the Tribunal advises that the evidence was sufficient, the investigation is continued.

⁵A PD may not be made until a minimum of 60 days following the initiation of an investigation. The 90-day maximum time limit is extendable to 135 days in complex cases.

⁶If an investigation is to be terminated because of a lack of evidence of injury, Revenue Canada issues a Notice of Termination and suspends the investigation. Interested parties may refer the termination within 30 days to the Canadian International Trade Tribunal. If such a referral is made, the Tribunal advises whether the evidence of injury justified the termination. If the Tribunal determines that the Revenue Canada decision was justified, Revenue Canada terminates the suspended investigation; if not, Revenue Canada resumes the investigation. If no referral within 30 days, Revenue Canada terminates the suspended investigation.

⁷Disclosure meetings are held as soon as possible after the preliminary determination in order to take into account for purposes of whether or not to make a final determination of dumping any representations made to Revenue Canada during the course of the meeting.

Maximum Time from Initiation		Activity
140 days	50 days after PD	The Canadian International Trade Tribunal Staff Report, which summarizes facts relevant to the investigation, including facts relevant to Article 3 injury factors, is provided to all parties
90-150 days	Up to 60 days following PD	Interested parties permitted to submit undertaking offers to Revenue Canada
90-180 days	Up to 90 days following PD	Acceptance of Undertakings and suspension of investigation⁸ <ul style="list-style-type: none"> - Undertaking offers may only be made up to 60 days after PD and must be accepted prior to the final determination (FD) of dumping - Provisional duties suspended - the dumping and injury investigations will be concluded, if requested
180 days	Up to 90 days following PD	Final Determination of Dumping or Termination by Revenue Canada <ul style="list-style-type: none"> - termination (dumping) ends all activities in the investigation, including the Tribunal injury inquiry, and provisional duties are returned - at FD: Public Notice and SOR issued along with notice to interested parties and foreign governments and individual exporter letters explaining company-specific results of the investigation
180 days	Approx. 90 days following PD ⁹	Tribunal Public and <i>In Camera</i> Hearings on injury commence ¹⁰ <ul style="list-style-type: none"> - Most hearings last less than one week - four days, on average - All parties may present their points of view on the question of injury and challenge/test information presented by other parties and contained in the Tribunal Staff Report
210 days	Up to 120 following PD	FD of Injury - No injury by the Tribunal <ul style="list-style-type: none"> - FD of injury results in imposition of definitive anti-dumping duties - no injury results in return of provisional duties and/or cancellation of securities posted
225 days	Up to 15 days following Tribunal finding	Tribunal Injury/No Injury Statement of Reasons
Approx. 393 days	Maximum six months following an FD of injury	Final assessment of definitive duties for goods subject to provisional duties <ul style="list-style-type: none"> - importations subject to provisional duties are reviewed and definitive duties assessed (not to exceed provisional liability)

B. LIST OF INFORMATION BELIEVED TO BE CONFIDENTIAL

There is no exact definition as to what constitutes confidential information. In Article 6.5 of the Anti-Dumping Agreement. However, Article 6.5 does provide general guidance insofar as information may be considered confidential because:

its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information.

⁸Unless the exporter offering the undertaking requests that the investigation be continued.

⁹Approximately 90 days after PD - administrative and not legislated.

¹⁰The term *injury* as used here includes threat of injury and material retardation as contemplated by footnote 9 of the A-D Agreement.

Product-specific information that could have such effect includes:

- costing data;
- domestic and export sales invoices;
- technical information and production processes;
- non-published price lists;
- non-public financial statements, etc.

While parties may designate information as confidential, such a designation must be warranted given the nature of the information and the purpose for which it is being submitted. Information that is already in the public domain does not warrant confidential treatment. In effect, *the determination* of whether or not specific information is confidential is made on a case-by-case basis.

C. LESSER DUTY

Canada does not have a lesser duty rule. It does, however, have a public interest provision which may allow for the application of anti-dumping duties below the full margin of dumping if such a duty is determined to be in the public interest.