



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Guidelines

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EXPIRY REVIEW

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# EXPIRY REVIEW GUIDELINES

## INTRODUCTION

These guidelines set out the general approach of the Canadian International Trade Tribunal (Tribunal) regarding the conduct of an expiry review of a finding or an order under section 76.03 of the *Special Import Measures Act (SIMA)*.<sup>1</sup>

Under *SIMA*, a finding or an order ordinarily expires at the end of five years, unless the Tribunal initiates an expiry review. The conduct of an expiry review is shared between the Tribunal and the Canada Border Services Agency (CBSA) and is divided into two distinct phases:

1. In the **expiry proceedings**, the Tribunal issues a notice of expiry of a finding or an order, receives submissions from persons<sup>2</sup> and governments, and decides if an expiry review is warranted.

If the Tribunal finds that an expiry review is not warranted, it issues a decision to that effect with reasons for its decision, and the finding or order expires five years from the date it was issued.

2. In the **expiry review**, if the Tribunal finds that an expiry review is warranted, it issues a notice of expiry review. Upon receipt of a notice of expiry review, the CBSA commences an investigation to determine whether the expiry of the finding or order is likely to result in the continuation or resumption of dumping and/or subsidizing.

If the CBSA determines that the expiry of the finding or order is likely to result in the continuation or resumption of dumping and/or subsidizing, the Tribunal then determines whether the expiry of the finding or order is likely to result in injury to the domestic industry or retardation of the establishment of a domestic industry.

These guidelines focus on the roles, responsibilities and procedures of the Tribunal in an expiry review, and provide an overview of the CBSA's key milestones in its expiry review investigation (also see APPENDIX 1 that provides an expiry review flowchart). For additional information on the CBSA's roles, responsibilities and procedures, refer to its *Information relating to Expiry Review Investigations Conducted pursuant to the Special Import Measures Act* found on its Web site at [www.cbsa-asfc.gc.ca/sima-lmsi/expg-ldexp-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/expg-ldexp-eng.html).

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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 expiry review by providing a brief description of the basic procedures that the Tribunal would ordinarily follow. The Tribunal may vary these procedures as it considers appropriate in the circumstances of an individual case.
  2. Under section 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.

## EXPIRY PROCEEDINGS

### Notice of Expiry

No later than two months prior to the expiry of a finding or an order, the Tribunal is required, pursuant to subsection 76.03(2) of *SIMA*, to issue a notice to all known interested persons and governments informing them of the impending expiry. The Tribunal may choose to issue the notice more than two months prior to the expiry date (e.g. three to five months prior to the expiry) if necessary, for example, to manage a high volume of cases. The notice is published in Part I of the *Canada Gazette* and is also posted on the Tribunal's Web site at [www.citt-tcce.gc.ca/en/dumping-and-subsidizing/expiries](http://www.citt-tcce.gc.ca/en/dumping-and-subsidizing/expiries). The notice provides the procedures to follow, invites interested persons and governments to submit their views on whether the finding or order should be reviewed, and gives direction on the issues that should be addressed in the submissions. The notice of expiry also sets out the information prescribed by subrule 73.1(1) and rule 73.2 of the *CITT Rules* and provided in APPENDIX 2.

### Schedule for Expiry Proceedings

The following table provides an indicative schedule of key events in expiry proceedings. While there is no statutory deadline in this first phase of an expiry review, 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 expiry warrant it.

Day	Key Event
0	Issuance of notice of expiry and schedule of events
16	Notices of participation and representation, and declarations and undertakings of confidentiality
17	Distribution of the list of participants
25	Submissions from parties requesting or opposing the initiation of an expiry review
35	Reply submissions
50	Issuance of notice of expiry review or decision not to review
65	Issuance of reasons for decision not to review (if applicable)

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

Any person or government wishing to participate as a party in an expiry must file a *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 an expiry must file a *Form II – Notice of Representation (Counsel)* and, to obtain access to confidential information, must also file a *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-tcce.gc.ca/en/forms](http://www.citt-tcce.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.

### **Written Submissions by Parties**

Parties have approximately 25 days from the date of the notice of expiry to submit their views on whether the Tribunal should initiate an expiry review. Parties are to file submissions either requesting or opposing the initiation of an expiry review, and must present both evidence and arguments relating to the factors set out in section 37.2 of the *Regulations*, as described in APPENDIX 2.

Where the Tribunal receives opposing views, each party that filed a submission in response to the notice of expiry is given approximately 10 days to respond in writing to the representations of other parties. Absent exceptional circumstances, the Tribunal will not accept any further submissions following the deadline for submitting reply submissions.

Generally, counsel and parties are required to serve their respective submissions on each other on the dates set out by the Tribunal in the expiry schedule. Detailed instructions regarding the service of the public and confidential submissions are provided in the notice of expiry.

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](http://www.citt-tcce.gc.ca/en/Confidentiality_guidelines_e).

Parties should also be aware that, if the Tribunal decides that an expiry review is warranted, any public and confidential information filed in the expiry proceedings is transferred to the CBSA. Should confidential information be filed, the Tribunal, in accordance with section 88.1 of *SIMA*, will indicate to the CBSA that certain information has been designated as confidential pursuant to subsection 46(1) of the *CITT Act*. The CBSA’s *Guidelines on the Disclosure of Confidential Information Provisions of the Special Import Measures Act* found on its Web site at [www.cbsa-asfc.gc.ca/sima-lmsi/ig-ldi-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/ig-ldi-eng.html) provides more detailed information on treatment of confidential information by the CBSA.

### **Combining Expiry Proceedings**

Where there are findings or orders concerning identical goods, or goods that the Tribunal considers to closely resemble each other, and where these findings or orders have expiry dates that are no more than one year apart, the Tribunal considers combining the expiry proceedings relating to those findings or orders, if the Tribunal considers it fair and efficient to do so.

In such cases, the Tribunal issues a single notice of expiry in respect of the findings or orders in question, inviting parties to make submissions requesting or opposing the initiation of an expiry review of each finding or order and to present their views on whether one or more of the findings or orders should be joined and examined in the context of a single expiry review. The Tribunal takes into account the submissions filed by parties in making its decision on whether to combine any proceedings.

## Decision on Whether to Initiate an Expiry Review

On Day 50 of the expiry proceedings, on the basis of the information submitted in response to a notice of expiry, the Tribunal determines whether an expiry review of the finding or order is warranted. If it determines that an expiry review of the finding or order is warranted, the Tribunal commences the expiry review proceedings by issuing a notice of expiry review.

If the Tribunal determines that an expiry review is not warranted, it issues a decision to that effect, and the finding or order expires five years from the date it was issued. The decision is also published in the *Canada Gazette* and the reasons for the Tribunal's decision are issued no later than 15 days following the decision, on Day 65. The Tribunal's decision and reasons are also posted on its Web site.

## EXPIRY REVIEW

The Tribunal's expiry review commences when the Tribunal issues a notice of expiry review. The notice of expiry review includes a schedule of events, is published in the *Canada Gazette* and is sent to the CBSA, to parties and counsel of record in the expiry proceedings. All known persons and governments are advised of the notice for the impending expiry review. The Tribunal also posts the notice and the schedule of events on its Web site.

The expiry review, which is usually completed in 310 days, involves two distinct steps: (1) the CBSA's investigation into the likelihood of continued or resumed dumping and/or subsidizing, which is conducted in the first 150 days; and (2) the Tribunal's expiry review into the likelihood of injury or retardation caused by the continuation or resumption of dumping and/or subsidizing, which is conducted in the final 160 days.

### Notice of Expiry Review and the CBSA's Investigation

A notice of expiry review briefly describes the roles and responsibilities of the CBSA and the Tribunal in the conduct of an expiry review. Detailed information on the contents of a notice, prescribed by subrules 71(1) and 73.1(3) of the *CITT Rules*, can be found in APPENDIX 3.

Upon receipt of a notice of expiry review, the CBSA is required, under paragraph 76.03(7)(a) of *SIMA*, to determine, on Day 150, whether the expiry of the finding or order is likely to result in the continuation or resumption of dumping and/or subsidizing of the goods under review. To reach its decision, the CBSA takes into consideration information provided by parties in the form of submissions and questionnaire replies; trade compliance data; import statistics; the results of its most recent re-investigation; market research; and the Tribunal's official record of its expiry proceedings. The reasons for the CBSA's determination are issued no later than 15 days following its determination.

If the CBSA determines that the expiry of the finding or order is likely to result in the continuation or resumption of dumping and/or subsidizing, in accordance with subsection 76.03(10) of *SIMA*, the Tribunal then commences its 160-day portion of the expiry review. At the same time as the CBSA notifies the Tribunal of its affirmative determination, it transfers all the information it took into consideration in reaching its determination, including the data relating to its enforcement of the Tribunal's finding or order, which provides the Tribunal with information pertaining to the volume and value of all imports under review entering Canada.

If the CBSA determines that the expiry of the finding or order is not likely to result in the continuation or resumption of dumping and/or subsidizing, it issues a decision to that effect, with reasons to follow 15 days later. Then, the Tribunal issues an order rescinding the finding or order. In accordance with section 7.2 of *SIMA*, the CBSA will refund any anti-dumping or countervailing duties collected between the expiry date and the date of the rescission.

In accordance with subsection 96.1(1) of *SIMA*, the CBSA's determination can be appealed for review by the Federal Court of Appeal. If this occurs, the Tribunal's expiry review would continue as usual, following an affirmative determination by the CBSA.

### **Schedule for the Tribunal's portion of the Expiry Review**

The following table provides an indicative schedule of key events in a Tribunal's expiry review. The Tribunal endeavours to adhere to the established schedule as set out below. However, the Tribunal may modify the schedule and any procedures if the circumstances of a particular expiry review warrant it. For example, if there are no opposing parties, the Tribunal may condense the schedule to reflect the lack of need for reply submissions, and **the hearing would be moved up one week.**

#### **Day - Key Event**

- 1 - Initiation of Tribunal's expiry review and posting of expiry review questionnaires on its Web site
- 15 - Notices of participation and representation, and declarations and undertakings of confidentiality
- 22 - Replies to expiry review questionnaires
- 53 - Distribution of Tribunal's official record, including information transferred from the CBSA and the investigation report
- 57 - Investigation report teleconference (when required)
- 53-75 - Requests for information (RFIs) and objections to RFIs, issuance of Tribunal's directions and receipt of RFI replies
- 59-75 - Requests for product exclusions, domestic producers' responses and requesters' replies to domestic producers' responses
- 60 - Cases of parties that support a continuation of the finding or order
- 68 - Cases of parties that oppose a continuation of the finding or order
- 76 - Reply submissions of parties that support a continuation of the finding or order
- 89 - Commencement of oral hearing
- 160 - Issuance of Tribunal's order and 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 an expiry review must file a *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 an expiry review must file a *Form II – Notice of Representation (Counsel)* and, to obtain access to confidential information, must also file a *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 a *Form I – Notice of Participation (Party)* during the expiry proceedings and wishes to participate in the Tribunal's expiry review must give notice to the Tribunal in writing by filing a *Form I – Notice of Participation (Party)* that applies to the expiry review. Counsel who filed a *Form II – Notice of Representation (Counsel)* and a *Form III – Declaration and Undertaking (Counsel and Consultant)* in the expiry proceedings and who continue to represent the same party in the Tribunal's expiry review, 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](http://www.citt-tcce.gc.ca/en/forms).

## Expiry Review Questionnaires

On Day 1 of its portion of the expiry review, the Tribunal posts on its Web site, at [www.citt-tcce.gc.ca/en/questionnaires](http://www.citt-tcce.gc.ca/en/questionnaires), expiry review questionnaires to be completed by domestic producers, importers, trading companies and foreign producers. In some cases, prior to posting the questionnaires on its Web site, the Tribunal may provide an opportunity for parties and counsel to comment on the content of the questionnaires and this consultation process may include a teleconference with parties' representatives. In an expiry review pertaining to subsidized goods, the governments of the countries of export may also be asked to reply to an expiry review questionnaire. In these expiry review 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 expiry review and the year immediately preceding the year of the expiry review. These questionnaires generally seek information on the volume and value of imports, domestic sales and exports, and the financial results of domestic producers.

The content of the expiry review questionnaires follows a general pattern but is subject to modifications on a case-by-case basis.

Respondents have approximately three weeks to complete their expiry review questionnaires.

## Investigation Report

An investigation report (public and confidential) is prepared based on the responses to the expiry review questionnaires and other relevant information on the record. The report forms part of the record and is distributed to parties and counsel.

Following the distribution of the investigation report, a teleconference may be held if it is deemed useful to address any specific questions or issues raised by a party. The teleconference will generally take place within 5 days of the distribution of the investigation report. Due to the nature of the information being discussed, only counsel who have signed a confidentiality undertaking are permitted to participate.

## Distribution of the Tribunal's Record

On or about Day 53, the Tribunal distributes the public record to those parties who are not represented by counsel. The public and confidential information on 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 record consists of:

- all information transferred from the CBSA with its notice of determination of likelihood of continued or resumed dumping and/or subsidizing;
- replies to expiry review questionnaires;
- the public and confidential investigation reports prepared for the on-going expiry review;
- the finding or order being reviewed with reasons for decision;
- the public and confidential investigation reports from the prior injury inquiry or the most recent related expiry review, if applicable;
- the record from the related expiry proceedings; and
- other information collected from various sources.

### **Requests for Information (RFI)**

From approximately Day 53 to Day 75, 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 59 to Day 75, the Tribunal carries out its product exclusion process. The Tribunal has the discretion to exclude products that would otherwise be subject to a finding of injury, threat of injury or retardation, or an order. 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 longer domestic production of the 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](http://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](http://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 60 to Day 76, 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 continuation of the finding of injury, threat of injury or retardation, or the order. 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 likelihood of injury or retardation. 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 evidence.

### **Oral Hearing**

On or about Day 89, following the distribution of the Tribunal's 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, of 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 the 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. However, if there are no opposing parties, the Tribunal **may** explore the possibility of a holding a file hearing, i.e. a hearing through written submissions only, instead of an oral hearing.

### **Tribunal's Order and Reasons**

On or about Day 160, the Tribunal issues its order and reasons for its determination on whether the expiry of the finding or order is likely to result in injury to the domestic industry or retardation of the establishment of a domestic industry. Depending on the circumstances of each case, however, the Tribunal may issue its reasons as late as Day 175, 15 days after the order.

In making its determination, the Tribunal may take into account any of the factors set out in subsection 37.2(2) of the *Regulations*, which can be found in APPENDIX 4.

If the Tribunal determines that the expiry of the finding or order is likely to result in injury to the domestic industry or retardation of the establishment of a domestic industry, it issues an order continuing the finding or order, with or without amendment, for up to five years or until a request for an interim review is filed with the Tribunal within that five-year period. Anti-dumping and/or countervailing duties continue to be collected while the order is in effect.

If the Tribunal determines that the expiry of the finding or order is not likely to result in injury to the domestic industry or retardation of the establishment of a domestic industry, it issues an order rescinding the finding or order under subparagraph 76.03(12)(a)(ii) of *SIMA*. Usually, the rescission of the finding or order is effective at the end of the five-year expiry period; however, in exceptional circumstances, it can be effective on the date of the issuance of the order or retroactive to the date of a specific occurrence such as the cessation of domestic production. In the event that the finding or order is rescinded after the end of the five-year expiry period, anti-dumping or countervailing duties collected between the date of the five-year expiry and the date of the rescission will be refunded by the CBSA, in accordance with section 7.2 of *SIMA*.

### **Judicial Review**

Any party may request judicial review by the Federal court of Appeal of the Tribunal's decision with respect to likelihood 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.

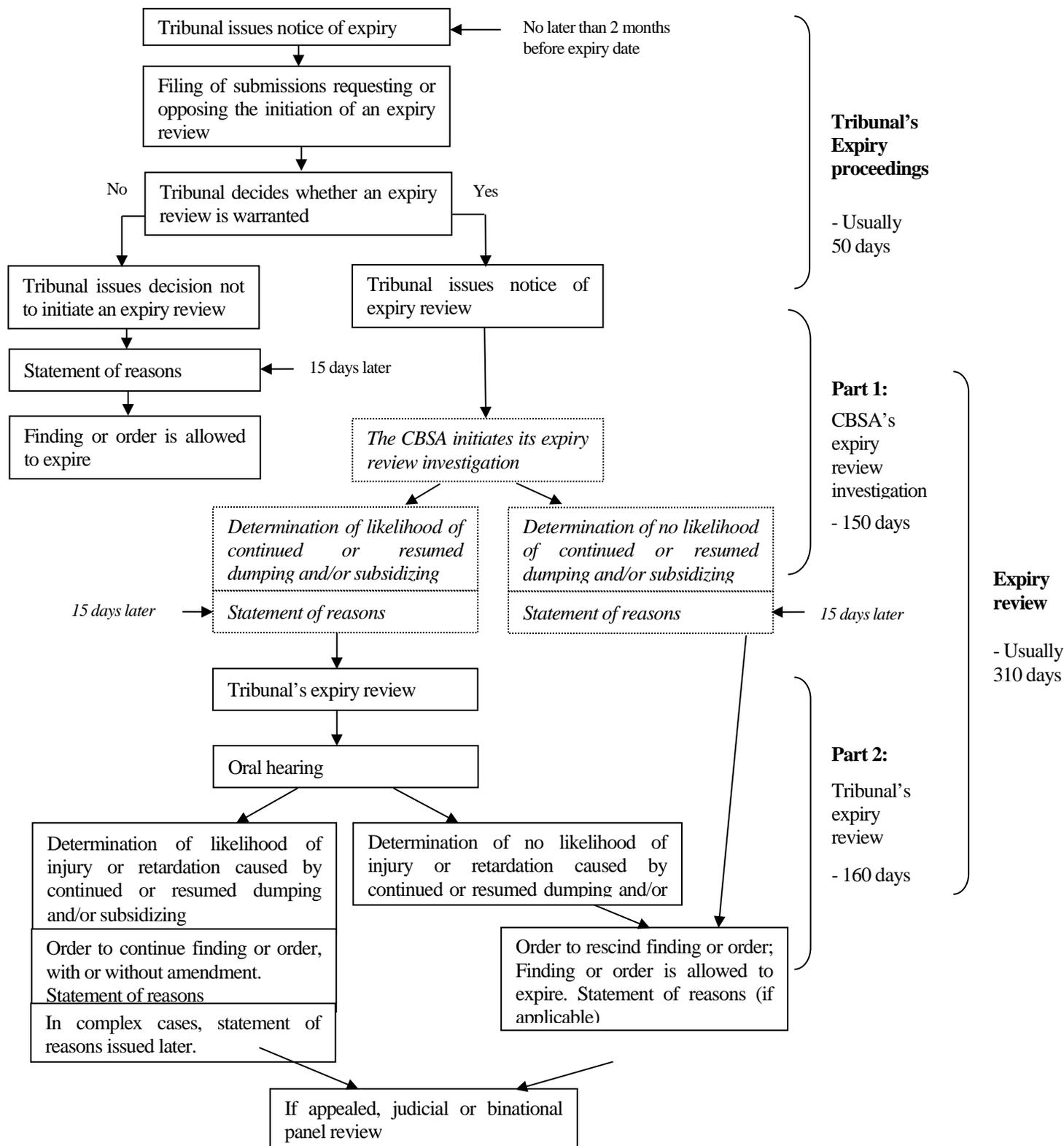
**More Information**

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

The Registrar  
Secretariat to the 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](mailto:citt-tcce@tribunal.gc.ca)

### APPENDIX 1 – EXPIRY REVIEW FLOWCHART



**APPENDIX 2 –  
INFORMATION CONTAINED IN A NOTICE OF EXPIRY**

Pursuant to subrule 73.1(1) of the *CITT Rules*, the Tribunal's notice of expiry shall contain:

1. the date on which the finding or order will expire;
2. the last date for any person or government requesting or opposing the commencement of a review of the finding or order to file any written submissions;
3. instructions with respect to the filing of confidential information; and
4. the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the expiry may be obtained.

In accordance with rule 73.2 of the *CITT Rules*, the notice also directs the parties to provide information in relation to the factors that the Tribunal considers in deciding whether an expiry review is warranted. These factors are prescribed in section 37.2 of the *Regulations*, and relate to:

1. the likelihood of continued or resumed dumping and/or subsidizing of the goods;
2. the likely volume and price ranges of dumped and/or subsidized imports if dumping and/or subsidizing were to continue or resume;
3. the domestic industry's recent performance (data for the past three calendar years and for the most recent three-month interim period), including supporting data and statistics showing trends in production, sales, market share, domestic prices, costs and profits;
4. the likelihood of injury to the domestic industry if the finding or order were allowed to expire, having regard to the anticipated effects of a continuation or resumption of dumped and/or subsidized imports on the domestic industry's future performance;
5. any other developments affecting, or likely to affect, the performance of the domestic industry;
6. changes in circumstances, domestically or internationally, including changes in the supply of, or demand for, the goods, and changes in trends in, and sources of, imports into Canada; and
7. any other matter that is relevant to the expiry proceedings.

**APPENDIX 3 –  
INFORMATION CONTAINED IN A NOTICE OF EXPIRY REVIEW**

Pursuant to subrules 71(1) and 73.1(3) of the *CITT Rules*, the Tribunal's notice of expiry review shall contain:

1. the statutory authority for the expiry review;
2. the subject matter of the expiry review, together with any other details of the expiry review;
3. the last date for an interested party to file a notice of participation;
4. the last date for counsel for an interested party to file a notice of representation and, if appropriate, a declaration and undertaking of confidentiality;
5. the last date for parties and counsel to file expiry review questionnaire replies, written case briefs and submissions;
6. instructions with respect to the filing of confidential information;
7. the address to which written case briefs, written submissions or correspondence may be sent or delivered and at which information in respect of the expiry review may be obtained; and
8. the place and time fixed for commencement of an oral hearing in the injury or retardation portion of the expiry review.

**APPENDIX 4 –  
EXPIRY REVIEW FACTORS REGARDING THE LIKELIHOOD OF INJURY OR  
RETARDATION**

*SPECIAL IMPORT MEASURES REGULATIONS*

37.2(2) In making a determination under subsection 76.03(10) of *SIMA*, the Tribunal may consider:

- (a) the likely volume of the dumped and/or subsidized goods if the finding or order is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped and/or subsidized goods, either in absolute terms or relative to the production or consumption of like goods;
- (b) the likely prices of the dumped and/or subsidized goods if the finding or order is allowed to expire and their effect on the prices of like goods, and, in particular, whether the dumping and/or subsidizing of goods are likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred;
- (c) the likely performance of the domestic industry, taking into account that industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits;
- (d) the likely performance of the foreign industry, taking into account that industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits;
- (e) the likely impact of the dumped and/or subsidized goods on the domestic industry if the finding or order is allowed to expire, having regard to all relevant economic factors and indices, including any potential decline in output, sales, market share, profits, productivity, return on investments or utilization of production capacity, and any potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital;
- (f) the potential for the foreign producers to produce the goods in facilities that are currently used to produce other goods;
- (g) the potential negative effects of the dumped and/or subsidized goods on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods;
- (h) evidence of the imposition of anti-dumping and/or countervailing measures by the authorities in a country other than Canada in respect of goods of the same description or in respect of similar goods;
- (i) whether measures taken by the authorities in a country other than Canada are likely to cause a diversion of the dumped and/or subsidized goods into Canada;
- (j) any changes in market conditions domestically or internationally, including changes in the supply of and demand for the goods, as well as any changes in trends and in sources of imports into Canada; and
- (k) any other factor pertaining to the current or likely behaviour or state of the domestic or international economy, market for goods or industry as a whole or in relation to individual producers, exporters, brokers or traders.