



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Guidelines

INTERIM REVIEW

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INTERIM REVIEW GUIDELINES

INTRODUCTION

These guidelines set out the general approach of the Canadian International Trade Tribunal (Tribunal) regarding the conduct of an interim review of its findings and subsequent orders under the *Special Import Measures Act (SIMA)*.¹

Under section 76.01 of *SIMA*, the Tribunal has the authority to review a finding of injury, threat of injury or retardation, or an order continuing such a finding pursuant to an expiry review, in whole or in part, at any time between the making of the finding or order and its expiry. At the conclusion of an interim review, the Tribunal may continue the finding or order, or rescind it or any aspect of it.

Under *SIMA*, the Tribunal may decide, either as a result of a properly documented request for an interim review, or on its own initiative, to conduct an interim review. There are two phases in an interim review:

1. In the **commencement phase**, the Tribunal decides whether there have been new facts or changes in circumstances since the issuance of the finding or order to warrant the conduct of an interim review. If the Tribunal finds that the conduct of an interim review is not warranted, it issues a decision to that effect, as well as reasons for its decision, and the proceedings are terminated. If the Tribunal finds that the conduct of an interim review is warranted, it commences the second phase of an interim review by issuing a notice of commencement of interim review.
2. In the **review phase**, the Tribunal determines whether the finding or order (or any aspect of it) should be rescinded or continued, with or without amendment, and issues reasons for its decision.

Appendix 1 provides an interim review flowchart.

COMMENCEMENT PHASE

The Tribunal can begin an interim review upon the filing of a request for interim review by the Minister of Finance, the Canada Border Services Agency (CBSA), or any person² or government.

An interim review can also begin if the Tribunal decides, on its own initiative, that an interim review is warranted. In such situations, there is no commencement phase. However, an interim review is usually initiated upon request of a person, such as an importer or foreign producer of the goods that are subject to a Tribunal's finding or order.

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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 interim review 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 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.

Under subsection 76.01(1.1) of *SIMA*, the Tribunal must refer any portion of a request for interim review relating to a decision by the CBSA setting out a finding of circumvention to the CBSA. The CBSA must make a decision relating to that portion of the request under section 75.4 of *SIMA*.

Request for the Commencement of an Interim Review

A request for an interim review may be filed with the Tribunal while its finding or order is still in effect, i.e. within five years of its date of issue.

A request for an interim review must include the information prescribed by subrule 70(1) of the *CITT Rules* and described in Appendix 2, as well as the grounds for an interim review and the facts on which those grounds are based, as described in Appendix 3.

A request can relate to the entirety of the finding or order or just to an aspect of it. In the case of a request for an interim review for the purpose of seeking to exclude a particular product from the finding or order, the requester should also consult the Tribunal's [Guideline to Making Requests for Product Exclusions](#). Other relevant information found on the [Tribunal's Web site](#) includes: 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's Reply to Domestic Producer's Response Form* for the use of the requester when replying to the domestic industry's response. Parties are not required to use the forms; submissions can be made in a different format, provided parties submit all the information and supporting documentation requested in the forms.

The requester should endeavour to base its submissions exclusively on public information. However, if the requester 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 its *Confidentiality Guidelines* on its Web site at citt-tcce.gc.ca/en/resource-types/confidentiality-guidelines.html.

Schedule for the Commencement Phase

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

Day	Key Event
0	Receipt of request for an interim review
1	Acknowledgement of request for an interim review
8	Notification to requester as to whether the request for an interim review is properly documented If request is properly documented, the Tribunal posts a copy of the public request for interim review on its Web site and notifies all parties to the injury inquiry or the most recent related expiry review If request is not properly documented, the Tribunal may request additional information

Day	Key Event
15	Notices of participation and representation, declarations and undertakings of confidentiality
16	Distribution of list of participants
23	Submissions from parties
33	Requester's reply submission
60	Issuance of notice of commencement of interim review if the Tribunal decides that the conduct of an interim review is warranted or Issuance of decision not to proceed with an interim review if the Tribunal decides that the conduct of an interim review is not warranted
75	Issuance of the reasons for its decision, if the Tribunal decides that the conduct of an interim review is not warranted

Decision on Whether the Request for an Interim Review is Properly Documented

Within a day or so of receipt of a request for an interim review, the Tribunal acknowledges receipt of the request and reviews it to ensure that it complies with the requirements set out in Appendix 2 and Appendix 3.

On or about Day 8, the Tribunal renders its decision as to whether the request is properly documented. If not properly documented, the Tribunal can decide to either terminate the case or can request additional information from the requester. A request for additional information may delay the Tribunal's decision on whether an interim review is warranted.

When the Tribunal decides that a request for an interim review is properly documented, it posts a copy of the public request on its Web site and notifies all who were parties to the injury inquiry or the most recent related expiry review. This is done in order to give the parties an opportunity to file submissions on the request, as prescribed by subrule 70(2) of the *CITT Rules*.

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

Any person or government wishing to participate as a party in an interim 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 interim 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. On the day after the deadline for the filing of notices of participation, the Tribunal generally 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 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.

Submissions

Parties who wish to file submissions in response to a request for an interim review 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 an interim review is warranted.

Parties may use information from the record of the injury inquiry or the most recent related expiry, subject to the conditions listed in Appendix 4.

Parties ordinarily have approximately 15 days from the date a properly documented request for an interim review is posted to file their submissions in writing. 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 its *Confidentiality Guidelines* on its Web site at citt-tcce.gc.ca/en/resource-types/confidentiality-guidelines.html.

Counsel and parties are required to serve their respective submissions on each other on the date set by the Tribunal and as per the Tribunal's detailed instructions provided to them.

Reply Submission from Requester

The requester will ordinarily have approximately 10 days to file with the Tribunal any comments on the submissions made by other parties, and to serve its comments on the other parties.

Decision on Whether to Commence an Interim Review

On Day 60 of the commencement phase of an interim review, the Tribunal decides, on the basis of the information submitted by the requester and other parties, whether an interim review is warranted.

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.

A common example of circumstances warranting an interim review is where the domestic industry has ceased all production of like goods since the finding or order was made. Other scenarios could include: termination of the foreign subsidizing of the goods that are the subject of the finding or order; cessation of foreign production of the goods covered by the finding or order; the remand of the final determination of dumping or subsidizing to the CBSA as the result of a *North American Free Trade Agreement (NAFTA)* panel or Federal Court of Appeal decision; or a significant reduction in the margins of dumping or amounts of subsidy.

An interim review may also be warranted where there are sufficient facts that, although in existence during the injury inquiry or the most recent related expiry review, were not put into evidence or were not discoverable by the exercise of reasonable diligence at that time. For example, an interim review may be warranted if the finding or order was based on perjured evidence and this fact only came to light after the finding or order was made.

If the Tribunal decides that an interim review is warranted, it issues a notice of commencement of interim review. This starts the review phase.

If the Tribunal decides that an interim review is not warranted, it issues a decision to that effect and publishes a notice of the decision in the *Canada Gazette*. The reasons for its decision are issued no later than 15 days following the Tribunal's decision. The Tribunal's decision and reasons are also posted on its Web site. The previous finding or order for which an interim review was requested expires at the end of its five-year period.

REVIEW PHASE

The review phase commences when the Tribunal issues a notice of commencement of interim review and concludes when the Tribunal issues an order rescinding or continuing, with or without amendment, the previous finding or order (or any aspect of it) for which a request for an interim review was filed.

Notice of Commencement of Interim Review

A notice of commencement of interim review briefly summarizes the key events that occurred at the commencement phase that led to the interim review, and describes the procedures to follow during the review phase. The notice also sets out the information described in Appendix 5. The notice is published in the *Canada Gazette*, and parties and all known interested persons from the injury inquiry or the most recent related expiry review are advised.

Schedule for the Review Phase

The following table provides an indicative schedule of key events in the review phase of an interim review. While there is no statutory deadline in this phase of an interim review, the Tribunal endeavours to adhere to the schedule as established. However, the Tribunal may modify the schedule if the circumstances of a particular interim review warrant it.

For example, in a standard case, the Tribunal may collect information in the form of submissions only. In a complex case, the Tribunal may collect information through requests for information, questionnaires and further submissions. The Tribunal may also hold an oral hearing to receive evidence and arguments and test submissions from parties.

Day	Key Event
0	Issuance of notice of commencement of interim review Posting of requests for information or questionnaires on the Tribunal's Web site (if applicable)
15	Notices of participation and representation, and declarations and undertakings of confidentiality
16	Distribution of list of participants Replies to requests for information or questionnaires (if applicable)
21	Distribution of Tribunal's record, including replies to requests for information or questionnaires (if applicable)
35	Submissions
50	Reply submissions
Case-specific	Commencement of oral hearing (if applicable)
Case-specific	Issuance of order
15 days after order	Issuance of 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 interim 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 interim 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. 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 who filed a *Form I – Notice of Participation (Party)* during the commencement phase and wishes to participate in the review phase must give notice to the Tribunal in writing. Counsel who filed a *Form II – Notice of Representation (Counsel)* and a *Form III – Declaration and Undertaking (Counsel and Consultant)* in the commencement phase, and who continue to represent the same party in the review phase, must file a *Form VI – Extended Declaration and Undertaking*. These forms are found on the Tribunal's Web site at citt-tcce.gc.ca/en/forms/forms.html.

Questionnaires and Requests for information

At the same time as the Tribunal issues its notice of commencement of interim review, it may ask the requester and other parties to provide additional information or respond to a questionnaire to validate the request for an interim review. For example, the Tribunal may collect domestic production and import data for a specific time period if the requester alleges that it started to import goods because the domestic industry ceased all production of like goods.

The requester and other parties ordinarily have 16 days to file their replies with the Tribunal.

Distribution of Tribunal's Record

On or about Day 21, the Tribunal distributes the public and confidential information on the record to counsel who have filed a *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 an interim review (public and confidential, as applicable);
- submissions of parties filed in response to the request for an interim review;
- reply submissions received from the requester and other parties during the commencement and review phases;
- all other information filed with the Tribunal during the commencement phase;
- the notice of commencement of interim review;
- replies to requests for information or questionnaires, if applicable;
- the public and confidential investigation reports from the injury inquiry or the most recent related expiry review, whichever is applicable;
- the finding or order and statement of reasons being reviewed;
- the lists of exhibits from the injury inquiry or the most recent relevant expiry review, whichever is applicable; and
- other information collected from various sources during the review phase.

Submissions and Reply Submissions

Parties are given the opportunity to make further written submissions to the Tribunal after they are provided with the Tribunal's record. Each party that files a submission in response to the notice of commencement of interim review is given the opportunity to respond in writing to the representations of the other parties.

Parties that intend to use information from the record of the injury inquiry or the most recent related expiry review in their submissions may do so subject to the conditions listed in Appendix 4.

Oral Hearing

In a complex case, 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 documentary evidence. Where the Tribunal makes the decision to hold an oral hearing after the issuance of the notice of commencement of interim review, the hearing date is announced at the earliest opportunity and is published in the *Canada Gazette* and on the Tribunal's Web site.

Tribunal's Order and Reasons

The Tribunal makes its decision on the basis of all the information collected during the commencement and review phases and placed on its record, as well as evidence, submissions and arguments heard during the oral hearing, if applicable.

At the conclusion of an interim review, the Tribunal issues an order rescinding or continuing, with or without amendment, the previous finding or order (or any aspect of it, as the circumstances require). The Tribunal usually issues its statement of reasons 15 days after issuing its order.

If the interim review order rescinds the previous finding or order, the rescission can be effective any time during the remainder of the five-year expiry period.

An interim review order that continues the previous finding or order, with or without amendment, expires on the date the related finding or order expires.

Judicial Review

Any party may challenge the Tribunal's decision by applying to the Federal Court of Appeal for judicial review. Alternatively, parties from the United States, Mexico or Canada may request a binational panel review of the Tribunal's decision under *NAFTA*. 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.

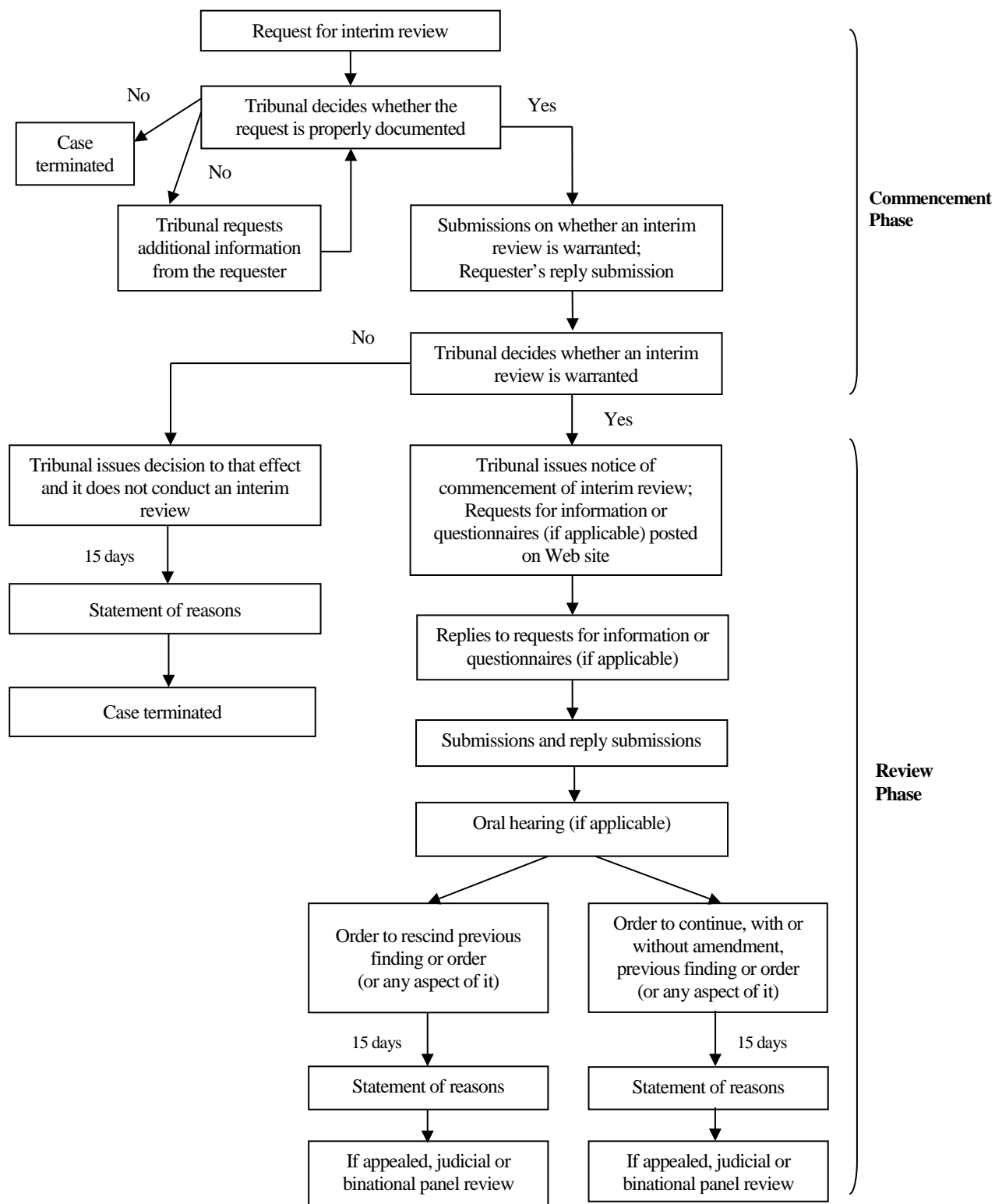
Contacting the Tribunal

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 – INTERIM REVIEW FLOWCHART



**APPENDIX 2 –
INFORMATION TO BE INCLUDED IN A REQUEST FOR
THE COMMENCEMENT OF AN INTERIM REVIEW**

Pursuant to subrule 70(1) of the *CITT Rules*, a request for an interim review must include:

1. 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, as applicable;
2. the nature of the requester's interest in the finding or order;
3. the grounds on which the requester believes that an interim review is warranted and a statement of facts on which those grounds are based; and
4. the nature of the order that the requester believes that the Tribunal should make on completion of the interim review.

APPENDIX 3 – IDENTIFYING THE GROUNDS FOR AN INTERIM REVIEW

In identifying the grounds for an interim review, the requester should:

1. identify the sufficient new facts or change in circumstances that have occurred since the finding or order and/or the sufficient facts that were not put in evidence during the previous injury inquiry or the most recent related expiry review and that were not discoverable by the exercise of reasonable diligence (collectively, the relevant circumstances);
2. identify the imported and domestic goods that the relevant circumstances affect or will affect;
3. identify any other changes in circumstances, domestically or internationally, including changes in the demand for the goods or their supply and changes in trends related to sources of imports into Canada or domestic production; and
4. provide any other information that is relevant to the Tribunal's decision on whether to commence an interim review.

APPENDIX 4 – USING INFORMATION FROM PRIOR RELATED TRIBUNAL PROCEEDINGS

The following conditions apply when parties use information from the official record of prior related Tribunal proceedings.

1. Any party filing, with its submissions to the Tribunal, documents, materials and information from the public record of prior related proceedings must identify them as such and provide their source, including the proceedings in which they originated.
2. Any reference, in the submissions of a party, to information in the public record of prior related proceedings, or to information derived therefrom, must be identified as such and include the specific source of the information and the proceedings in which it originated.
3. Any party wanting to use or refer to documents or materials contained in the public record of prior related proceedings that are not otherwise filed by or with the Tribunal in an interim review, shall advise the Tribunal and the other parties.
4. A party wanting to submit information from the public record of prior related proceedings may have to seek prior approval from the Tribunal.
5. Any party wanting to use or refer to confidential documents or materials contained in the confidential record of prior related proceedings that are not otherwise filed by or with the Tribunal in an interim review, shall make a request to the Tribunal to direct the Registrar to place such documents or materials on the record. If the Tribunal is of the view that the information contained in such documents and materials warrants placing them on the record, it will direct the Registrar to do so. If the Tribunal is not satisfied that the transfer of such materials is warranted, it may deny the request, providing written reasons for its decision.

**APPENDIX 5 –
INFORMATION IN THE TRIBUNAL’S NOTICE OF COMMENCEMENT OF
INTERIM REVIEW**

Pursuant to subrule 71(1) of the *CITT Rules*, the Tribunal’s notice of commencement of interim review shall contain:

1. the statutory authority for the interim review;
2. the subject matter of the interim review and any other relevant details;
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 any written submissions;
6. instructions with respect to the filing of confidential information;
7. the address to which written submissions or correspondence may be sent or delivered and at which information in respect of the interim review may be obtained;
8. the place and time fixed for the commencement of an oral hearing, if necessary, in the interim review.