



PRACTICE DIRECTION

RECEIPT OF PHYSICAL EXHIBITS BY THE CANADIAN INTERNATIONAL TRADE TRIBUNAL DURING THE CURRENT COVID-19 SITUATION

This protocol is further to the Tribunal's Practice Directive of August 25, 2021, cancelling substantially all in-person hearings until December 31, 2021. It is established pursuant to rules 6 and 8 of the *Canadian International Trade Tribunal Rules*. The timeframes and procedures set out in this protocol for filing physical exhibits supersede those set out in the *Rules* particularly, but without limitation, in paragraph 34(3)(b).

The protocol is intended to minimize the handling of physical exhibits. It shall remain in effect as long as sanitary measures related to the COVID-19 pandemic are required to protect the health and safety of individuals. As such, it will also apply when in-person hearings resume. As health and safety guidelines in regards to physical distancing and other sanitary measures evolve the protocol will be modified accordingly.

This protocol does not apply to exhibits that are allegedly prohibited devices or weapons. A separate protocol will be established between the Tribunal and the Canada Border Services Agency for access to such exhibits.

- A. The Tribunal recognizes the right of parties to submit the evidence necessary to the presentation of their case. In light of the difficulties posed by the current COVID-19 situation for the receipt by the Tribunal of physical exhibits that are representative of the goods in issue, the Tribunal asks that parties consider whether the purpose that they hope to achieve by the submission of such physical exhibits could be achieved through the submission of photographs, schematics, videos, product literature, measurements and/or other representations of the goods in issue,¹ as well as through the testimony of witnesses during the course of a videoconference hearing.
- B. If a party concludes that the purpose can be achieved through an alternative means, the party will advise the Tribunal and the other parties no later than **40** days before the commencement of the hearing and specify the alternative means that it proposes to use. If the presenting party wishes to present the good in issue through the testimony of witnesses during the course of a videoconference hearing, the opposing parties may request, no later than **35** days before the commencement of the hearing, to receive a physical exhibit in accordance with subsection b. (**Exhibit Delivery to Opposing Parties**) of the Procedure for Delivery of Exhibits set out below.

¹ The Tribunal is able to accept digital videos in many acceptable formats, but prefers files in the AVI format, as stipulated in the Library and Archives Canada guidelines for archiving.

- C. Should a party be required by an opposing party to deliver a physical exhibit to such other party pursuant to paragraph B, it shall also deliver an identical physical exhibit to the Tribunal in accordance with subsection a. (**Exhibit Delivery to the Tribunal**) of the Procedure for Delivery of Exhibits set out below.

- D. Should a party conclude that an alternative means of presenting the goods in issue is insufficient, and that it is important to submit such physical exhibits to the Tribunal for examination, it shall deliver an identical physical exhibit to the Tribunal and to each opposing party in accordance with the Procedure for Delivery of Exhibits set out below, unless any opposing parties indicate in writing to the party presenting the physical exhibit that receipt of the physical exhibit is not necessary (correspondence to be copied to the Tribunal).

Step by Step Procedures for Delivery of Exhibits When Required:

- 1. When a party asks the Tribunal to examine a physical exhibit, it will do so subject to the following procedures being followed.

- 2. **Thirty (30) days before the commencement of the hearing**, the party submitting the exhibit shall provide a sample of the exhibit to the Tribunal and one to each opposing party that requests a sample.
 - a. **Exhibit Delivery to the Tribunal:**
 - i. The party wishing to deliver an exhibit to the Tribunal shall coordinate a date and time with the Registry to courier the item.

 - ii. The party submitting the physical exhibit(s) shall file and serve pictures of the exhibit (converted to PDF format) that have been taken from all angles beside a ruler or tape measure in order to show scale. The measuring device must show metric measurements (i.e. cm/mm) – it can show both metric and imperial measurements.

 - iii. The party submitting the physical exhibit(s) must sanitize the object before packing it for shipping and shall file a statement by electronic mail indicating the date and time the exhibit was sanitized for packaging as well as explaining how it was sanitized. If this information is not included on the package, the package will be quarantined for two (2) weeks before it is opened. In the event that special handling, cleaning or storing precautions are required for a physical exhibit, this must be stated explicitly in a letter accompanying the exhibit, and clear instructions provided – the package must be marked “**DO NOT OPEN BEFORE READING PACKING INSTRUCTIONS/NE PAS OUVRIR AVANT DE LIRE LES INSTRUCTIONS DE CONDITIONNEMENT**”. Any exhibit considered

hazardous must be labelled clearly as requiring special attention and must be accompanied by the [Safety Data Sheet](#) (SDS) or its equivalent.

- iv. The party presenting the physical exhibit shall indicate on the shipping package that it is a physical exhibit and clearly identify the file number as well as the style of cause to which the exhibit pertains to.

b. Exhibit Delivery to Opposing Parties:

- i. If opposing parties request to view the item, the parties will coordinate the exchange of the exhibit between themselves following safety precautions that they agree on.
- ii. The party introducing the exhibit shall provide to the Tribunal a written confirmation from the opposing party that it has received the exhibit.

c. Exhibit Return to Submitting Party:

- i. When appropriate, the Registry staff will sanitize the item and make arrangements for pick-up or delivery of the physical exhibit.