

Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

Process Steps in a Canadian Antidumping Expiry Review (Sunset) Proceeding

By Cyndee Todgham Cherniak on August 27th, 2015

Posted in Antidumping, Cross-border trade, Trade Remedies



In Canada, we call the 5 year antidumping order review an “expiry review”; it is called a “sunset review” in the United States. Under the WTO Antidumping Agreement, Canada must review antidumping orders before the 5 year anniversary of the Canadian International Trade Tribunal (“CITT”) Order. The normal steps in an expiry review proceeding are as follows:

- 1) Approximately 18 months before the anniversary date of the CITT’s Order, the Canada Border Services Agency (“CBSA”) may conduct a reinvestigation of normal values and export prices. This is not a mandatory procedural step. It is, however, common practice. The CBSA updates the normal values and export prices to reflect costs in the months prior to the reinvestigation.
- 2) About one year before the anniversary date of the CITT’s Order, the CITT conducts an LE proceeding and asks parties involved in the previous proceeding before the CITT to provide submissions on whether an expiry review proceeding is necessary. In most cases, the domestic industry files submissions that an expiry review is necessary and the CITT agrees with the domestic industry.
- 3) About 10 months before the anniversary date of the CITT’s Order, the Tribunal issues a “Notice of Expiry Review of Finding. The CITT issues questionnaires to be completed and filed.
- 4) The CBSA takes 90 days to conduct part 1 of the expiry review proceeding. The CBSA conducts an investigation as to whether the dumping will continue or resume should the CITT’s Order be rescinded. In almost every case, the CBSA makes a positive determination. On the 90th day, the CBSA issues its decision.
- 5) About 4.5 months before anniversary date of the CITT’s Order and the day after the CBSA’s decision, the CITT conducts part 2 of the expiry review proceeding. The CITT conducts an inquiry as to whether the dumping is likely to cause injury or threat of injury to the domestic industry.
- 5A) As part of the CITT expiry review proceeding, the domestic industry files submissions (and supporting evidence) in support of the continuation of the Order. One week later, parties opposed to an Order to continue the Order file submissions in opposition to the continuation of the Order (and supporting evidence). One week later, the domestic

industry is permitted to file reply submissions (and additional evidence). The submissions must set out the arguments the parties believe are relevant. In addition, if a representative is going to testify at the hearing, it is necessary to also file a witness statement setting out the testimony of the person. Certain evidence must be presented by way of a witness statement (e.g., lost sales allegations).

5B) Importers/exporters/foreign producers may file product exclusion requests to ask the Tribunal to exclude certain goods from the Tribunal's Order or finding.

5C) The CITT will conduct a hearing approximately 1.5 months before anniversary date of the CITT's previous Order. Prior to the hearing, the parties are entitled to file RFIs (requests for information) asking to CITT to direct parties to provide certain information.

On or before the anniversary date of the CITT's Order, the CITT will issue a decision to rescind the Order or continue the order with or without amendments. product exclusions are stated as amendments to the previous Order.

Tags: antidumping, Antidumping duty, CBSA, expiry review, product exclusion, reinvestigation, sunset review

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