



May 8, 2014

## **Submission to the House of Commons Standing Committee on Finance (FINA)**

Subject: Bill C-31, Division 29  
*Administrative Tribunals Support Services Act*

The Canadian Steel Producers Association (CSPA) wishes to submit to the Committee its concerns with the proposal in Bill C-31 to create an Administrative Tribunals Support Services Agency (ATSSA), insofar as the ATSSA would include resources currently in the Canadian International Trade Tribunal (CITT).

The ATSSA would centralize the staff, administrative and case management systems, and financial resources for eleven tribunals and commissions (“tribunals”) that span multiple areas of public policy. CSPA presumes the intent is to reduce the total cost of support to the tribunals in question, and to allow their current people and financial resources to be deployed in support of any of these tribunals. While the individual tribunals would continue to fall under current Ministerial responsibilities, the people and resources currently reporting to them would now be managed by a new Agency head (Deputy Minister) reporting to the Minister of Justice.

For reasons described below, CSPA submits that including the CITT resources in the new ATSSA stands to impact adversely a core part of Canada’s trade remedy system. The fundamental issue, in our view, is that the effective and efficient functioning of the CITT would continue to be best served by expert staff and procedures that are under the direction and control of the Tribunal itself.

Bill C-31 does not address how the new ATSSA would assure this expertise and continuity. We therefore recommend amending Bill C-31 to exclude the transfer of CITT resources into the ATSSA<sup>1</sup>. Any such change should only follow extensive consultation with affected stakeholder groups, to demonstrate how the ATSSA model would properly address multiple concerns raised in this and other submissions. This, we submit, would require legislation separate from the C-31 process and timelines.

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<sup>1</sup> CSPA does not take a position on the inclusion of any other agency in the ATSSA.

## Rationale

The CITT is the body responsible in Canadian law for determining antidumping and subsidy (AD/CVD) duties, when it has been proven that such measures are necessary to restore market-based competition in Canada, thus helping to counter the injury to Canadian industry from WTO-inconsistent foreign trade practices.<sup>2</sup> Such determinations follow a formal quasi-judicial process that is fact-based and in accordance with agreed international rules and norms, domestic legal principles, and defined timelines. Procedures and determinations must be fair to both sides to a dispute. The *status quo* meets these criteria consistently in our experience, and Canadian processes and practices are well-regarded internationally.

The entire trade remedy process, and within it the effective functioning of the CITT, is very important to Canada's steel producers. Our industry is the most frequent user of such legal redress, because of the egregious and widespread dumping and subsidy practices from countries such as China, Korea, Turkey and others. Steel producers have a strong vested interest in the functioning of this system. In this submission, we do not argue why the AD/CVD laws are so vital, nor do we discuss specific cases. This submission focuses on systemic concerns that transferring CITT's resources and systems to the ATSSA seriously risks the Tribunal's ability to render effective, fair and timely judgments. This is important to both Canadian industry and importers. It also introduces the potential to increase costs for domestic producers participating in CITT trade cases.

CITT determinations are product and case-specific, i.e. when domestic industry seeks the application of AD/CVD duties, it petitions on the basis of defined products and named countries engaged in these unfair trade practices. In forming its judgments, the Tribunal evaluates the evidence presented by producers and importers; but it also benefits from the research, legal expertise, and experience of CITT's internal staff. CITT staff also work to assure timely, consistent and fair procedures. These in-house resources are directed by and accountable to the CITT Chair, who functions also as the Deputy Minister for administrative purposes.

Under the new ATSSA, this set of relationships would be disrupted and accountability diffused. Ongoing, specific expertise could at best be only partially assured through administrative mechanisms yet to be developed. This risks the effective operation of the Tribunal in several respects:

- The international rules applying to AD/CVD and their application in Canada are a specific area of law, precedent and practice. The CITT and its proceedings benefit from consistent access to strong research and legal support under its direction. We cannot see how these essential

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<sup>2</sup> CITT has additional roles not discussed here, regarding government procurement and the Agreement on Internal Trade. These also rely on the specific expertise of CITT staff.

relationships could be achieved as effectively or consistently were those resources to reside and report elsewhere.

- The CITT has a challenging and growing workload that must be managed with the resources available to it (which have been reduced already). The CITT's work is increasingly complex, as Canada's trade relationships expand and as a greater range of countries export to Canada. This places a further premium on specialized competence. In seeking to serve eleven tribunal masters, we do not see how the ATSSA could assure similar dedicated expertise over time.
- The efficient functioning of the trade case process itself, including the carefully-managed procedures to apply in a given case, is important to both domestic industry and importers participating in individual cases.
- Professionals to exercise these functions are recruited for their abilities in these particular areas of law and economics. Under the broadly-mandated ATSSA structure, one would expect new staff to be recruited as generalist versus specialist personnel. Management of the ATSSA would also, we expect, be less specialized in trade remedy matters.
- While individual cases are managed by CITT with appropriate independence, the Minister of Finance has a trade remedy policy role. It is not clear how the respective roles of the Minister of Finance and the Minister of Justice would be exercised under this new structure.

In sum, based on our industry's extensive experience with the trade remedy system, and looking at the potential implications of this new model, we feel it introduces genuine risks to the effectiveness of CITT process, with those risks increasing over time. This is contrary to CSPA's longstanding position that the government must strengthen all parts of the trade remedy system, including CITT, in light of the growing impact of illegal foreign trade practices in the Canadian steel market.

We are aware that the Canadian Bar Association (CBA) and other trade lawyers are raising additional points of legal principle (international and domestic) and procedure. CSPA does not repeat all those arguments in this submission, but we feel they introduce additional, valid concerns that should be addressed before making such a significant and permanent change to the functioning of the system.

#### Potential Impacts on Canadian Government and Industry

An effective, consistent CITT process is necessary to make timely, fact-based determinations consistent with applicable laws and appropriate procedures. It is important for the Committee to recognize potential impacts to domestic industry and to the government should the new ATSSA arrangement lead to fewer, less effective determinations or to less efficient AD/CVD processes:

- There are well-established procedures and forms of interaction among the Tribunal, CITT staff, Canadian industry, importers, and their trade counsel.

- These stand to require more effort and expense in successive cases, if staff assigned to particular cases do not have such continuity and expertise.
- Were a *bona fide* AD or CVD case not to prevail in consequence, the cost to Canadian industry in lost revenues and jobs, and to government revenues, would greatly exceed any presumed administrative cost efficiencies.
  - This new arrangement, if implemented, would be at odds with comparable U.S. practices, creating potential inconsistencies in the manner in which similar cases are treated in our highly-integrated markets.
  - CITT decisions are reviewable by the Federal Courts. The risk of such appeals on procedural grounds may grow, without the specific expertise and formal processes that CITT presently controls. Such appeals add legal expense and business uncertainty to Canadian industry.

### Conclusion and Recommendations

The proposal to transfer tribunal resources into the new ATSSA is premised on achieving cost efficiencies in government, without changing the policy or role of the tribunals in question. In the case of the CITT, however, such a change introduces clear risks to the functioning of the trade remedy system, with direct impacts on domestic industry, importers, and the government itself. Substantive impacts are likely to weaken the trade remedy system, not strengthen it. This is of direct concern to Canadian steel producers.

*Accordingly, we recommend that the government amend the Bill to exclude CITT in the creation of the ATSSA, thus maintaining the existing roles and responsibilities of the Tribunal, its Chair, and its current support functions and resources.*

In making this submission, we note there was no prior consultation on the ATSSA proposal with domestic industries most likely to be affected (nor with trade legal advisors). Further, we are unaware of any prior argument by either domestic or importer interests to make fundamental change to the way in which research and legal support operate in the CITT at present. These are further reasons not to proceed with the CITT element at this time.

Should the government wish to continue to consider folding the CITT support resources into the ATSSA, it should first consult the affected stakeholders including the industry and legal communities, and develop specific legislation to address the concerns identified.

Respectfully submitted,

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President