
ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 1999**

**Canadian
International
Trade Tribunal**

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CHAIRMAN

PRÉSIDENT

May 27, 1999

The Honourable Paul M. Martin, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1999.

Yours sincerely,

Pierre Gosselin

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CHAPTER I

TRIBUNAL HIGHLIGHTS IN FISCAL YEAR 1998-99

Members

On April 6, 1998, Mr. Richard Lafontaine was appointed to the position of Member of the Canadian International Trade Tribunal (the Tribunal). Prior to his appointment, Mr. Lafontaine was Chair of the Standards Council of Canada. Mr. Lafontaine has also held senior positions with Warnock Hersey Professional Services Ltd., Lavalin and its successor, SNC - Lavalin, and Inchcape Testing Services.

During the fiscal year, the terms of Messrs. Robert C. Coates, Q.C., Arthur B. Trudeau and Charles A. Gracey as Members of the Tribunal expired. The Tribunal takes this opportunity to thank these Members for their valuable contribution to the Tribunal's work.

Bill C-35 Amending the *Special Import Measures Act* and the *Canadian International Trade Tribunal Act*

On March 25, 1999, Bill C-35 that amends the *Special Import Measures Act* (SIMA) and the *Canadian International Trade Tribunal Act* (the CITT Act) received Royal Assent. The date of implementation will be established by Order in Council.

The main changes in SIMA are a re-allocation of responsibilities between the Tribunal and the Department of National Revenue (Revenue Canada) with respect to preliminary injury determinations and expiry reviews. The amendments also clarify the public interest provisions of section 45 of SIMA. In addition, a change in the CITT Act will give experts access to confidential information in Tribunal inquiries, subject to certain conditions. Chapter II provides more information on the legislative changes affecting the Tribunal.

Dumping and Subsidizing Inquiries and Reviews

In fiscal year 1998-99, the Tribunal issued two findings following injury inquiries under section 42 of SIMA. At the end of the fiscal year, three inquiries were in progress. During the fiscal year, the Tribunal also issued five orders following reviews under section 76. At the end of the year, there were five reviews in progress.

Public Interest Investigation

On April 29, 1998, the Tribunal, under subsection 43(1) of SIMA found that the dumping in Canada of certain prepared baby foods originating in or exported from the United States (Inquiry No. NQ-97-002) had caused material injury to the domestic industry. Having received representations on the question of public interest, the Tribunal decided to initiate a public interest investigation under section 45 of SIMA. On November 30, 1998, the Tribunal issued its report to the Minister of Finance recommending a reduction in the anti-dumping duties on certain prepared baby foods from the United States.

Trade and Tariff References**Dairy Blends**

On June 30, 1998, the Tribunal submitted to the Government its report on the importation of dairy product blends outside the coverage of Canada's tariff-rate quotas. The inquiry was referred to the Tribunal on December 17, 1997, by the Governor in Council on the recommendation of the Minister of Finance, the Minister of Agriculture and Agri-Food and the Minister for International Trade.

Textiles

During fiscal year 1998-99, the Tribunal issued 12 reports to the Minister of Finance concerning requests for tariff relief. In addition, the Tribunal's fourth annual status report on the investigation process was submitted to the Minister of Finance on February 11, 1999.

Appeals of Revenue Canada Decisions

The Tribunal issued decisions on 90 appeals from Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA.

Pursuant to a reference from the Deputy Minister of National Revenue (the Deputy Minister) (Reference No. AP-98-055) under section 70 of the *Customs Act*, the Tribunal rendered its decision with respect to the tariff classification of butteroil blends, comprising less than 50 percent butteroil and more than 50 percent sugar (sucrose), and the tariff classification of blends of butteroil and glucose. With respect to the tariff classification of blends of butteroil and processing solids, the Tribunal was of the view that it was not possible to reach a definitive view on the classification, in light of the indeterminate and variable nature of ingredients which may go to make up the processing solids portion of such blends.

Procurement Review

The Tribunal received 55 new complaints during the fiscal year. The Tribunal issued 21 written determinations of its findings and recommendations. Ten of these determinations related to cases that were in progress at the end of fiscal year 1997-98. In 9 of the 21 written determinations, the complaints were determined to be valid or valid in part.

Inquiry Process and SIMA

For a number of years, the Tribunal has reported in the Annual Report on its efforts to improve the inquiry process under SIMA. This year's annual report includes a chapter that describes, in more detail, initiatives that have been implemented to improve the Tribunal's inquiry process.

Access to Tribunal Notices, Decisions and Publications

Tribunal notices and decisions are published in the *Canada Gazette*. Those relating to procurement complaints are also published in *Government Business Opportunities*.

The Tribunal's Web site (www.citt.gc.ca) provides an exhaustive repository of all Tribunal decisions, as well as other information relating to the Tribunal's current activities.

Rules of Procedure

The Tribunal is pursuing its extensive review of the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure) in order to eliminate unnecessary rules, increase efficiency and transparency and preserve fairness. The proposed amendments will facilitate procedures arising from technological changes. The changes to SIMA and the CITT Act also require the Tribunal to amend its rules in order to respond to these changes.

Meeting Statutory Deadlines (Timeliness)

All of the Tribunal inquiries were completed on time, and decisions were issued within the statutory deadlines. For appeals of Revenue Canada decisions that are not subject to statutory deadlines, the Tribunal usually issues, within 120 days of the hearing, a decision on the matter in dispute, including the reasons for its decision.

New Information Brochures

The Tribunal published two new information sheets entitled "Information on Import Safeguard Inquiries and Measures" and "Information on Economic, Trade and Tariff Inquiries." Both can be accessed on the Tribunal's Web site.

Tribunal's Caseload in Fiscal Year 1998-99

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 1999)
SIMA ACTIVITIES						
References (Advice)	-	2	2	2	-	-
Inquiries	1	4	5	2	-	3
Public Interest Requests	-	1	1	1	-	-
Requests for Review	-	-	-	-	-	-
Expiries ¹	2	6	8	7	1	-
Reviews	3	7	10	5	-	5
APPEALS						
<i>Customs Act</i>	231	75	306	78	69	159
<i>Excise Tax Act</i>	187	9	196	11	12	173
SIMA	<u>59</u>	<u>24</u>	<u>83</u>	<u>1</u>	<u>47</u>	<u>35</u>
Total	477	108	585	90	128	367
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES						
Textile Reference						
Requests for Tariff Relief	19	19	38	17 ²	6	15
Expiries ¹	3	2	5	3	1	1
Reviews	-	3	3	3	-	-
Economic, Trade and Tariff-Related Matters	1	-	1	1	-	-
PROCUREMENT REVIEW ACTIVITIES						
Complaints	11	55	66	24 ³	27	15

1. As a result of a different method of reporting expiries, the first column refers to expiries for which decisions on whether or not to review had not been made prior to the end of the previous fiscal year. The fourth column refers to decisions to review.
2. The Tribunal actually issued 12 reports to the Minister of Finance which related to 17 requests for tariff relief.
3. The Tribunal actually issued 21 written determinations which related to 24 procurement complaints.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedies system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The main legislation governing the work of the Tribunal is the CITT Act, the *Canadian International Trade Tribunal Regulations* (the CITT Regulations), the *Canadian International Trade Tribunal Procurement Inquiry Regulations*, the Tribunal's Rules of Procedure, SIMA, the *Customs Act* and the *Excise Tax Act*.

Mandate

The Tribunal's primary mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct inquiries into complaints by potential suppliers concerning federal government procurement that is covered by the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (the AIT) and the World Trade Organization (WTO) *Agreement on Government Procurement* (the AGP);
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct inquiries and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

Method of Operations

In carrying out most of its responsibilities, the Tribunal conducts inquiries with hearings that are open to the public. These are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although hearings may also be held elsewhere in Canada in person or through videoconferencing facilities. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information. The CITT Act contains provisions that strictly control access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting US and/or Mexican interests in SIMA. Governments that are members of the WTO may challenge some of the Tribunal's decisions to a dispute settlement panel under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Membership

The Tribunal may be composed of nine full-time members, including a Chairman and two Vice-Chairs, who are appointed by the Governor in Council for a term of up to five years that is renewable one time. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

Members of the Tribunal, currently 6 in number, are supported by a permanent staff of 86 people. Its principal officers are the Secretary, responsible for administration, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; the Executive Director, Research, responsible for the investigative portion of the inquiry, for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; and the General Counsel, responsible for the provision of legal services to the Tribunal.

Consultations

The Tribunal, through the Tribunal/Canadian Bar Association Bench and Bar Committee, provides a forum to promote discussion on issues of importance with the bar. The committee also includes representatives from the trade consulting

**Bill C-35
Amending SIMA
and the CITT Act**

community. The Tribunal holds meetings with the bar and representatives of industries and others that appear or that are likely to appear before the Tribunal to exchange views on new procedures being considered by the Tribunal prior to their distribution as guidelines or practice notices.

One of the main thrusts of the SIMA amendments is a re-allocation of responsibilities between the Tribunal and Revenue Canada for each to focus on its respective expertise in injury and in dumping and subsidizing. The Tribunal, instead of the Deputy Minister, will make the preliminary determination of injury. A new 60-day preliminary inquiry is created for this purpose. Domestic producers will continue to file their complaints of alleged injurious dumping with the Deputy Minister. The Tribunal's preliminary inquiry will commence when the Deputy Minister initiates a dumping or subsidizing investigation.

The Deputy Minister will make the determination of likelihood of continuation or resumption of dumping or subsidizing that the Tribunal now makes in expiry reviews. The Tribunal will continue to make the determination regarding the likelihood of material injury. Parties will also continue to make submissions to the Tribunal supporting or opposing an expiry review, and the Tribunal will continue to decide if a review is warranted and if a finding or order should be rescinded or continued, with or without amendment. The amendments also clarify section 76 of SIMA, establishing separate "interim" and "expiry" reviews. In the new interim review, the Tribunal will be able to review certain aspects of a finding or order, without having to consider whether to rescind or continue the finding or order for an additional period of five years.

The other significant change to SIMA affecting the Tribunal is a clarification of the public interest provisions under section 45. The Tribunal will determine, on the basis of requests by interested persons, whether there are reasonable grounds for initiating a public interest inquiry. The legislation also provides for the *Special Import Measures Regulations* (the SIMA Regulations) to set out the factors that the Tribunal may consider in determining if a reduction or elimination of duties would be in the public interest. The amendments introduce a change in what recommendations the Tribunal may make under section 45. Under the current regime, the Tribunal may only recommend the elimination or reduction of duties. Under the amended section 45, it also has the option of recommending a price or prices that are "adequate to eliminate injury ... to the domestic industry."

There are several other amendments to SIMA, most of which will affect Revenue Canada. However, a number of amendments will change, to some degree, the manner in which the Tribunal conducts injury inquiries and reviews. In addition, amendments to the CITT Act will give experts "acting under the

direction and control of counsel” access to confidential information in Tribunal proceedings, except in appeals. These same amendments create penalty provisions for any violation of confidentiality undertakings that counsel and experts may make.

The implementation of the legislative changes will be accompanied by new and revised SIMA Regulations and CITT Regulations, Tribunal Rules of Procedure and Tribunal guidelines on the conduct of preliminary injury inquiries, reviews and public interest inquiries and on access to confidential information by experts. The proposed processes and timetables for preliminary injury inquiries and expiry reviews are appended to this chapter.

Organization

CHAIRMAN

Pierre Gosselin

VICE-CHAIRS

Raynald Guay
Patricia M. Close

MEMBERS

Anita Szlajak
Peter F. Thalheimer
Richard Lafontaine

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

LEGAL SERVICES BRANCH

General Counsel
Gerry Stobo



Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Extension Inquiries of Safeguard Measures and Report
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts
SIMA (Anti-dumping and Countervailing Duties)	
33, 34, 35 and 37	Advice to Deputy Minister
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommencement of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Advice on Public Interest Considerations
61	Appeals of Re-determinations of the Deputy Minister Made Pursuant to Section 59 Concerning Whether Imported Goods are Goods of the Same Description as Goods to which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Deputy Minister or Other Interested Persons
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who is the Importer

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
<i>Customs Act</i>	
67	Appeals of Decisions of the Deputy Minister Concerning Value for Duty and Origin and Classification of Imported Goods
68	New Hearings on Remand from the Federal Court of Canada
70	References of the Deputy Minister Relating to the Tariff Classification or Value for Duty of Goods
<i>Excise Tax Act</i>	
81.19, 81.21, 81.22, 81.23 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal
<i>Softwood Lumber Products Export Charge Act</i>	
18	Appeals of Assessments and Determinations of the Minister of National Revenue
<i>Energy Administration Act</i>	
13	Declarations Concerning the Amount of Oil Export Charge






PROPOSED PROCESS AND TIMETABLE FOR PRELIMINARY INJURY INQUIRY

			Days	Canadian International Trade Tribunal	
Revenue Canada initiates dumping/subsidizing investigation (90 days) 	Start of Revenue Canada investigation Tribunal inquiry (60 days) Earliest date for preliminary determination of dumping or subsidizing Preliminary determination of dumping or subsidizing or termination (Possibility of extension of up to 45 days) 		0 / 1	Notice of commencement of inquiry Receipt of file from Revenue Canada	
			12	Publication of notice in <i>Canada Gazette</i>	
			20	Notices of appearance from parties and counsel Submissions from parties supporting the complainant(s)	
			22	Distribution of Revenue Canada file and, if necessary, of staff research or panel questions	
			32	Submissions by other parties (importers and exporters)	
			39	Domestic producers' reply submissions	
			60	Preliminary determination of injury or termination, both with reasons	
			61-89	Preparation of questionnaires for possible inquiry under section 42	
			30 days	90	
			Next day		Commencement of inquiry under section 42 Tribunal issues questionnaires

Note: No Tribunal questionnaires or oral hearing, except in exceptional circumstances.

PROPOSED PROCESS AND TIMETABLE FOR EXPIRY REVIEW

Notice of Expiry (LE) issued at least 10 months before expiry

		Days	Canadian International Trade Tribunal	
LE phase (approx. 50 days) 		1	Notice of expiry	
		25	Submissions	
		33	Reply submissions	
		50	Notice of review, or decision not to initiate with reasons 15 days later	
Expiry review (approx. 250 days) 	Revenue Canada likelihood of dumping/subsidizing phase (120 days) 	1	File transferred to Revenue Canada	
		20	Notices of appearance from parties and counsel	
		120		
	Revenue Canada likelihood of dumping/subsidizing determination 	Tribunal likelihood of injury phase (approx. 130 days) 	1	Receipt of file from Revenue Canada Rescission of finding if Revenue Canada's determination is negative; likelihood of injury phase of review, if determination is positive
			15	Distribution of Revenue Canada file to parties
			50	Distribution of file (Staff report and any remaining exhibits)
			80 / 85	Hearing
130			Decision to rescind or continue, with or without amendment, with reasons	

Note: On day one of its likelihood of dumping/subsidizing investigation, Revenue Canada will issue questionnaires to producers, exporters and importers. Replies to these questionnaires will be included in the file transferred to the Tribunal.

CHAPTER III

DUMPING AND SUBSIDIZING INQUIRIES AND REVIEWS

The Process

Under SIMA, Canadian producers may have access to anti-dumping and countervailing duties to offset unfair injurious competition from goods exported to Canada:

- (1) at prices lower than sales in the home market or lower than the cost of production (dumping), or
- (2) that have benefited from certain types of government grants or other assistance (subsidizing).

The determination of dumping and subsidizing is the responsibility of Revenue Canada. The Tribunal determines whether such dumping or subsidizing has caused “material injury” or “retardation” or is threatening to cause material injury to a domestic industry.

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister. The Deputy Minister may then initiate a dumping or subsidizing investigation leading to a preliminary and then a final determination of dumping or subsidizing. The Tribunal commences its inquiry when the Deputy Minister issues a preliminary determination. Revenue Canada levies provisional duties on imports from the date of the preliminary determination.

Inquiries

When it commences an inquiry, the Tribunal seeks to make all interested parties aware of the inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties.

In conducting inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by counsel. The Tribunal staff carries out extensive research for each inquiry. The Tribunal sends questionnaires to manufacturers, importers, purchasers and, in some inquiries, exporters. Questionnaire responses are the primary source of information for staff reports. These reports focus on the factors that the Tribunal considers in arriving at decisions regarding material injury or retardation or threat of material injury to a

**Advice Given
Under Section 37
of SIMA**

domestic industry. The reports become part of the case record and are made available to counsel and parties. Confidential or business-sensitive information is protected in accordance with provisions of the CITT Act. Only independent counsel who have filed declarations and confidentiality undertakings may have access to such confidential information.

The CITT Regulations prescribe factors that the Tribunal may consider in its determination of whether the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on production, sales, market shares, profits, employment and utilization of production capacity.

The Tribunal holds a public hearing about 90 days after the commencement of the inquiry following receipt of the Deputy Minister's final determination of dumping or subsidizing. At the public hearing, domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or is threatening to cause material injury to a domestic industry. Importers and, sometimes, exporters and users of the goods usually challenge the domestic producers' case. After cross-examination by parties and then examination by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. In many inquiries, the Tribunal calls witnesses who are knowledgeable about the industry and market in question. Parties may also seek exclusions from a Tribunal finding of material injury or retardation or threat of material injury to a domestic industry.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Deputy Minister. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding. A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry is the legal authority for the imposition of anti-dumping or countervailing duties by Revenue Canada.

When the Deputy Minister decides not to initiate a dumping or subsidizing investigation because there is insufficient evidence of injury, the Deputy Minister or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Deputy Minister discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry. When the Deputy Minister decides to initiate an investigation, a similar recourse is available to the Deputy Minister or any person or government under section 34 of SIMA.

**Inquiries
Completed
in 1998-99**

***Certain Prepared
Baby Foods***

NQ-97-002

*Finding:
Injury
(April 29, 1998)*

Section 37 of SIMA requires the Tribunal to render its advice within 30 days. The Tribunal makes its decision, without holding a public hearing, on the basis of the information before the Deputy Minister when the decision regarding initiation was reached.

The Tribunal issued two advices during fiscal year 1998-99. They concerned *Certain Filter Tipped Cigarette Tubes* (Reference No. RE-98-001) and *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (Reference No. RE-98-002). In both cases, the Tribunal concluded that the evidence before the Deputy Minister disclosed a reasonable indication that the dumping had caused material injury or was threatening to cause material injury to a domestic industry. Both cases subsequently proceeded to inquiries under section 42 of SIMA.

The Tribunal completed two inquiries under section 42 of SIMA in fiscal year 1998-99. Inquiry No. NQ-97-002 concerned *Certain Prepared Baby Foods*, and Inquiry No. NQ-98-001 concerned *Certain Stainless Steel Round Bar*. In 1997, the Canadian markets for these products were estimated to be approximately \$60 million and \$30 million respectively.

The inquiry involved dumped imports of certain prepared baby foods by Gerber Products Company (Gerber) of the United States. H.J. Heinz Company of Canada Ltd. (Heinz) of Leamington, Ontario, was the sole Canadian producer. The Director of Investigation and Research, Competition Bureau, was also a party in the inquiry, submitting that the dumping had not caused or threatened to cause material injury. The Tribunal found that dumping from the United States had caused material injury to a domestic industry.

The Tribunal found that Heinz' injury consisted of cost and expense increases, volume losses, price erosion and suppression, and reduced profits. The Tribunal determined that most, if not all, of the increased costs and expenses and volume losses were unrelated to dumping. In particular, the market had declined because of factors such as switches to homemade baby food.

The Tribunal found that Heinz' financial statements for certain prepared baby foods still showed several millions of dollars in reduced operating profits caused by price erosion. The Tribunal examined in depth the factors determining pricing in the grocery and drug retail channels where Heinz and Gerber bid against each other for market share. Several major retail chains, including Loblaw Companies Limited and Shoppers Drug Mart Limited (Shoppers), the largest customers of Heinz and Gerber respectively, renegotiated their supply contracts during the inquiry period. The evidence indicated that Gerber bid very aggressively for this

**Certain Stainless
Steel Round Bar**

NQ-98-001

*Finding:
Injury
(September 4, 1998)*

business and was successful in getting Shoppers' business, including the portion that was previously supplied by Heinz.

The evidence also showed that Gerber's prices were almost always lower than those of Heinz. The Tribunal found that the price erosion experienced by Heinz was primarily due to dumping and that none of the other factors examined, either individually or collectively, satisfactorily explained the price erosion that occurred. The Tribunal also found that the dumping prevented Heinz from recouping some or all of its cost increases through higher prices. Finally, it was evident that Heinz would have lost market share to Gerber if it had not lowered prices to meet the competition from dumping and that any loss of market share would have had substantial consequences on Heinz' financial performance.

The inquiry concerned dumped imports of certain stainless steel round bar from the Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom. The sole domestic producer was Atlas Specialty Steels, A Division of Atlas Steels Inc. (Atlas) of Welland, Ontario. The Tribunal found that the dumping had caused material injury to a domestic industry, but excluded certain products from its finding.

Although the Deputy Minister found that exporters in each of the nine named countries had dumped imports, he also determined that the volume of dumped imports from each of four of the countries was less than 3 percent of imports of certain stainless steel round bar from all countries. However, the Deputy Minister determined that the volume of dumped imports from the four countries was not "negligible" because the total volume of dumped imports from the four countries was greater than 7 percent of imports of certain stainless steel round bar from all countries. The Tribunal examined this issue in the inquiry and also concluded that the volume of dumped imports from the four countries was not negligible. Accordingly, the Tribunal analyzed the effects of the dumping from all the named countries on a cumulative basis.

The Tribunal found that the material injury incurred by Atlas during the inquiry period consisted of lost market share, lower sales volumes and prices, revenue losses and lower profitability. With the exception of imports from the Republic of Korea, the Tribunal determined that imports from non-subject countries had not been a significant factor in the injury incurred by Atlas. In the Tribunal's view, the injury was caused primarily by dumping from the subject countries. Their imports grew substantially in 1996 and 1997, and their market share surged by 54 percent in 1997. Immediately after the Deputy Minister initiated a dumping investigation, Atlas recovered a significant part of the market share that it had previously lost.

**Inquiries in
Progress at the
End of 1998-99**

The evidence also showed that Atlas's average selling price dropped significantly in 1997. Atlas had reduced its prices by more than 10 percent on average to meet competition from the dumped imports. The data showed that average import prices declined before domestic prices. There was also extensive evidence that the price of imports from the subject countries was driving prices down at particular accounts.

Lower selling prices and, to some extent, the inability to raise prices, as well as lower sales volumes, had a major impact on Atlas's financial results between 1995 and 1997. Sales revenues dropped by 20 percent, while profits plunged by close to 50 percent. Over the period of inquiry, Atlas suffered diminished revenue and profitability, amounting to several millions of dollars, when measured against the levels achieved in 1995.

The Tribunal also concluded that there was evidence that certain stainless steel round bar from the Republic of Korea was being dumped in the Canadian market and that there was a reasonable indication that such dumping threatened to cause injury. The Tribunal advised the Deputy Minister under section 46 of SIMA.

There were three inquiries in progress at the end of fiscal year 1998-99: *Certain Filter Tipped Cigarette Tubes* (Inquiry No. NQ-98-002), *Certain Stainless Steel Round Bar* (Inquiry No. NQ-98-003) and *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (Inquiry No. NQ-98-004). The inquiry on cigarette tubes concerns dumped imports from France. The main domestic producer is CTC Tube Company of Canada Inc. of Montréal, Quebec, and the exporter is GIZEH Raucherbedarf GmbH of Germany. The inquiry on stainless steel bar concerns imports from the Republic of Korea. The sole domestic producer is Atlas Specialty Steels, A Division of Atlas Steels Inc. The inquiry on hot-rolled steel sheet concerns dumped imports from France, Romania, the Russian Federation and the Slovak Republic. The domestic producers are Stelco Inc. of Hamilton, Ontario; Dofasco Inc. of Hamilton; Algoma Steel Inc. of Sault Ste. Marie, Ontario; Ipsco Inc. of Regina, Saskatchewan; and Ispat Sidbec Inc. of Montréal. The importers and exporters that are also parties in the inquiry are Aciers Francosteel Canada Inc., Sollac, Aciers d'Usinor, Thyssen Canada Limited, VSZ Holding, a.s. (East Slovak Iron and Steel Works), Novolipetsk Iron & Steel Corporation, Joint Stock Company "SeverStal" and Magnitogorsk Iron & Steel Works.

Table 1 summarizes the Tribunal's inquiry activities during the fiscal year.

**Public Interest
Consideration
Under Section 45
of SIMA**

Where, after a finding of injury or threat of injury, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it reports this opinion to the Minister of Finance with a statement of the facts and reasons that led to its conclusions and recommendations. The Minister of Finance decides whether there should be a reduction in duties.

During the injury inquiry, interested parties may make a request to make representations to the Tribunal on the matter of public interest. Representations may be made after the completion of the inquiry. The Tribunal will then conduct a public interest investigation if it considers that there is a public interest concern worthy of further investigation.

During fiscal year 1998-99, the Tribunal completed a public interest investigation with respect to its finding of material injury in *Certain Prepared Baby Foods* (Inquiry No. NQ-97-002). The Tribunal issued a report to the Minister of Finance (Public Interest Investigation No. PB-98-001), in which it recommended a reduction in the anti-dumping duties on certain prepared baby foods from the United States. After considering all the relevant interests and weighing the evidence before it, the Tribunal concluded that the continued imposition of the anti-dumping duties in the full amount was not in the public interest and recommended that the duties be reduced. The Tribunal's specific import pricing recommendations were contained in a confidential appendix provided to the Minister of Finance. The effect of the Tribunal's recommendation, if implemented by the Minister of Finance, would be a reduction in the duties by about two thirds.

Importer Ruling

Under section 90 of SIMA, the Deputy Minister may request the Tribunal to rule on the question as to which of two or more persons is the importer of goods on which anti-dumping or countervailing duties are payable. If the Tribunal identifies as the importer a person other than the one specified by the Deputy Minister, the Tribunal may reconsider its original finding of material injury.

In fiscal year 1998-99, the Tribunal conducted one inquiry pursuant to section 90 of SIMA. It concerned a request by the Deputy Minister on behalf of D & L Business Canada Ltd. for a ruling on the question of which of two persons was the importer in Canada of fresh garlic originating in or exported from the People's Republic of China. The majority of the Tribunal ruled that the importer in Canada of the said goods was D & L Business Canada Ltd.

Requests for Review

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Deputy Minister or any other person or government (subsection 76(2) of SIMA). However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of changed circumstances. In such a review, the Tribunal determines if the changed circumstances are such that the finding or order remains necessary. There were no requests for review in fiscal year 1998-99.

Expiries and Reviews

Subsection 76(5) of SIMA provides that a finding or order expires after five years, unless a review has been initiated. It is Tribunal policy to notify parties nine months prior to the expiry date of a finding or order. If a review is requested, the Tribunal will initiate one if it determines that it is warranted.

During fiscal year 1998-99, the Tribunal issued six notices of expiry. The Tribunal decided that reviews were warranted in each case and initiated reviews. In the case of a notice of expiry issued in fiscal year 1997-98, *Tillage Tools* (Expiry No. LE-97-007), the Tribunal decided that a review was not warranted. The finding expired on November 22, 1998.

The purpose of a review is to determine if anti-dumping or countervailing duties remain necessary. In the case of reviews upon expiry, the Tribunal assesses whether dumping or subsidizing is likely to continue or resume and, if so, whether the dumping or subsidizing is likely to cause material injury to a domestic industry. The Tribunal conducts reviews according to procedures that are similar to those in an inquiry.

Upon completion of a review, the Tribunal issues an order with reasons, pursuant to subsection 76(4) of SIMA. The Tribunal may rescind or continue a finding or order with or without amendment. If the Tribunal continues a finding or order, it remains in force for a further five years unless a review has been initiated and the finding or order is rescinded. If the finding or order is rescinded, imports are no longer subject to anti-dumping or countervailing duties.

Reviews Completed in 1998-99

In fiscal year 1998-99, the Tribunal completed five reviews.

The Tribunal continued its finding in *Preformed Fibreglass Pipe Insulation* (Review No. RR-98-001) respecting dumped imports from the United States. Manson Insulation Inc. of Brossard, Quebec, the sole domestic producer, and three exporters from the United States participated in the review.

**Reviews in
Progress at the
End of 1998-99**

The Tribunal rescinded its finding in *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (Review No. RR-97-006) respecting dumped imports from Belgium, the Federative Republic of Brazil, the Czech Republic, Denmark, the Federal Republic of Germany, Romania, the United Kingdom and the former Yugoslav Republic of Macedonia. Algoma Steel Inc., Stelco Inc. and IPSCO Inc., domestic producers accounting for most of Canadian production, and several importers, as well as exporters from the Federative Republic of Brazil, the Czech Republic, the Federal Republic of Germany and Romania, participated in the review.

The Tribunal rescinded its findings in *Certain Cold-rolled Steel Sheet* (Review No. RR-97-007) respecting dumped imports from the Federal Republic of Germany, France, Italy, the United Kingdom and the United States. Stelco Inc., Dofasco Inc., Algoma Steel Inc. and Ispat Sidbec Inc., the domestic producers, and several importers, as well as exporters from the United States, France and the Federal Republic of Germany, participated in the review.

The Tribunal rescinded its finding in *Certain Copper Pipe Fittings* (Review No. RR-97-008) respecting dumped imports by certain exporters in the United States. Cello Products Inc. of Cambridge, Ontario, and Bow Metallics Inc. of Montréal, domestic producers seeking a continuation of the finding, and Streamline Copper & Brass Ltd. of Strathroy, Ontario, a domestic producer seeking the rescission of the finding, as well as two of the US exporters, participated in the review.

The Tribunal rescinded its order in *Paint Brushes and Heads* (Review No. RR-98-002) respecting dumped imports from the People's Republic of China. T.S. Simms & Co. Limited of Saint John, New Brunswick, Nour Trading House Inc. of Waterloo, Ontario, and Pintar Manufacturing, Division of Ladcal Investments Limited of Toronto, Ontario, all supported the continuation of the order.

Five reviews were in progress at the end of the fiscal year. They were the findings in: (1) *Synthetic Baler Twine* (Review No. RR-98-003) respecting dumped imports from the United States; (2) *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (Review No. RR-98-004) respecting dumped imports from Italy, the Republic of Korea, Spain and the Ukraine; (3) *12-gauge Shotshells* (Review No. RR-98-005) respecting dumped imports from the Czech Republic and the Republic of Hungary; (4) *Black Granite Memorials and Black Granite Slabs* (Review No. RR-98-006) respecting dumped and subsidized imports from India; and (5) *Certain Corrosion-resistant Steel Sheet Products* (Review No. RR-98-007) respecting dumped imports from

**Judicial or Panel
Review of SIMA
Decisions**

Australia, the Federative Republic of Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States.

Table 2 summarizes the Tribunal's review activities during the fiscal year. Table 3 lists Tribunal findings and orders in force as of March 31, 1999.

Any person affected by Tribunal findings or orders can request judicial review by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law. In cases involving goods from the United States and Mexico, requests may be made for judicial review by the Federal Court of Canada or for panel review by a binational panel. Table 4 lists the Tribunal's decisions under section 43, 44 or 76 of SIMA that were before the Federal Court of Canada for judicial review or a binational panel for panel review in fiscal year 1998-99.

During the fiscal year, a binational panel affirmed the Tribunal's finding of injury (United States) in the case of *Concrete Panels* (Inquiry No. NQ-96-004).

At the end of the fiscal year, the Federal Court of Canada had not yet heard applications to review the Tribunal's finding of injury in *Certain Stainless Steel Round Bar* (Inquiry No. NQ-98-001) and its orders in *Certain Hot-rolled Carbon Steel Plate* (Review No. RR-97-006) and in *Certain Cold-rolled Steel Sheet* (Review No. RR-97-007). Also at the end of the fiscal year, binational panels had not yet heard the applications to review the Tribunal's finding of injury (United States) in *Certain Prepared Baby Foods* (Inquiry No. NQ-97-002) and its orders (United States) in *Certain Cold-rolled Steel Sheet* (Review No. RR-97-007) and in *Certain Copper Pipe Fittings* (Review No. RR-97-008). Finally, a binational panel had not issued its decision in the application to review the Tribunal's finding of threat of injury (Mexico) in *Certain Hot-rolled Carbon Steel Plate* (Inquiry No. NQ-97-001).

**WTO Dispute
Resolution**

Governments that are members of the WTO may challenge Tribunal injury findings or orders in dumping and countervailing cases to the WTO dispute settlement bodies. This is initiated by inter-governmental consultations. There are no Tribunal findings or orders before the dispute settlement bodies of the WTO.

TABLE 1

Findings Issued Under Section 43 of SIMA Between April 1, 1998, and March 31, 1999, and Inquiries Under Section 42 of SIMA in Progress at Year End

Inquiry No.	Product	Country	Date of Finding	Finding
NQ-97-002	Certain Prepared Baby Foods	United States	April 29, 1998	Injury
NQ-98-001	Certain Stainless Steel Round Bar	Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	September 4, 1998	Injury
NQ-98-002	Certain Filter Tipped Cigarette Tubes	France	In progress	
NQ-98-003	Certain Stainless Steel Round Bar	Republic of Korea	In progress	
NQ-98-004	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	In progress	

TABLE 2

Orders Issued Under Section 76 of SIMA Between April 1, 1998, and March 31, 1999, and Reviews in Progress at Year End

Review No. or Expiry No.	Product	Country	Date of Order	Order
RR-97-006	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Belgium, Federative Republic of Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	May 5, 1998	Finding rescinded
RR-97-007	Certain Cold-rolled Steel Sheet	Federal Republic of Germany, France, Italy, United Kingdom and United States	July 28, 1998	Findings rescinded
RR-97-008	Certain Copper Pipe Fittings	United States	October 16, 1998	Finding rescinded
RR-98-001	Preformed Fibreglass Pipe Insulation	United States	November 18, 1998	Finding continued
RR-98-002	Paint Brushes and Heads	People's Republic of China	January 18, 1999	Order rescinded
LE-97-007	Tillage Tools	Federative Republic of Brazil	June 22, 1998	Review not warranted
RR-98-003	Synthetic Baler Twine	United States	In progress	
RR-98-004	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Republic of Korea, Spain and Ukraine	In progress	
RR-98-005	12-gauge Shotshells	Czech Republic and Republic of Hungary	In progress	
RR-98-006	Black Granite Memorials and Black Granite Slabs	India	In progress	
RR-98-007	Certain Corrosion-resistant Steel Sheet Products	Australia, Federative Republic of Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	In progress	

TABLE 3

Findings and Orders in Force as of March 31, 1999¹

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-93-003	April 22, 1994	Synthetic Baler Twine	United States	
NQ-93-004	May 17, 1994	Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Republic of Korea, Spain and Ukraine	
NQ-93-005	June 22, 1994	12-gauge Shotshells	Czech Republic and Republic of Hungary	
NQ-93-006	July 20, 1994	Black Granite Memorials and Black Granite Slabs	India	
NQ-93-007	July 29, 1994	Corrosion-resistant Steel Sheet Products	Australia, Federative Republic of Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	
NQ-94-001	February 9, 1995	Delicious and Red Delicious Apples	United States	
RR-94-002	March 21, 1995	Canned Ham and Canned Pork-based Luncheon Meat	Denmark, Netherlands and European Union	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990)
RR-94-003	May 2, 1995	Women's Footwear	People's Republic of China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
RR-94-005	July 5, 1995	Refill Paper	Federative Republic of Brazil	NQ-89-004 (July 6, 1990)

1. This table shows the findings and orders in force. To determine the precise product coverage, refer to the Review No. or Inquiry No. as identified in the first column of the table.

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-94-006	August 25, 1995	Photo Albums with Self-adhesive Leaves and Self-adhesive Leaves	Republic of Korea, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand, Philippines and Hong Kong, China	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987) RR-89-012 (September 4, 1990) NQ-90-003 (January 2, 1991)
RR-94-007	September 14, 1995	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986) RR-89-010 (September 14, 1990)
NQ-95-001	October 20, 1995	Caps, Lids and Jars	United States	
NQ-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	
RR-95-001	July 5, 1996	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986) RR-90-005 (June 10, 1991)
RR-95-002	July 25, 1996	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Federative Republic of Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992)
RR-96-001	September 12, 1996	Stainless Steel Welded Pipe	Taiwan	NQ-91-001 (September 5, 1991)
NQ-96-002	March 21, 1997	Fresh Garlic	People's Republic of China	
NQ-96-003	April 11, 1997	Polyiso Insulation Board	United States	
RR-96-004	April 21, 1997	Machine Tufted Carpeting	United States	NQ-91-006 (April 21, 1992)
NQ-96-004	June 27, 1997	Concrete Panels	United States	

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-97-001	October 20, 1997	Waterproof Rubber Footwear	People's Republic of China	ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987) RR-92-001 (October 21, 1992)
NQ-97-001	October 27, 1997	Certain Hot-rolled Carbon Steel Plate	Mexico, People's Republic of China, Republic of South Africa and Russian Federation	
RR-97-002	November 28, 1997	Fresh Iceberg (Head) Lettuce	United States	NQ-92-001 (November 30, 1992)
RR-97-003	December 10, 1997	Bicycles and Frames	Taiwan and People's Republic of China	NQ-92-002 (December 11, 1992)
NQ-97-002	April 29, 1998	Certain Prepared Baby Foods	United States	
RR-98-001	November 18, 1998	Preformed Fibreglass Pipe Insulation	United States	NQ-93-002 (November 19, 1993)
NQ-98-001	September 4, 1998	Certain Stainless Steel Round Bar	Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	

TABLE 4

Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 1998, and March 31, 1999

Case No.	Product	Country of Origin	Forum	Date Filed	File No./ Status
NQ-96-004	Concrete Panels	United States	BP	July 21, 1997	CDA-97-1904-01 Decision affirmed
NQ-97-001	Certain Hot-rolled Carbon Steel Plate	People's Republic of China	FC	November 26, 1997	A—856—97 Withdrawn
NQ-97-001	Certain Hot-rolled Carbon Steel Plate	Mexico	BP	November 28, 1997	CDA-97-1904-02
NQ-97-002	Certain Prepared Baby Foods	United States	BP	June 5, 1998	CDA-USA-98-1904-01
NQ-98-001	Certain Stainless Steel Round Bar	Federal Republic of Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	FC	October 2, 1998	A—591—98
RR-97-006	Certain Hot-rolled Carbon Steel Plate	Belgium, Federative Republic of Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	FC	June 4, 1998	A—365—98
RR-97-007	Certain Cold-rolled Steel Sheet	Federal Republic of Germany, France, Italy, United Kingdom and United States	BP	September 1, 1998	CDA-USA-98-1904-02
			FC	August 27, 1998	A—483—98/ A—484—98/ A—514—98/ A—515—98
RR-97-008	Certain Copper Pipe Fittings	United States	BP	November 20, 1998	CDA-USA-98-1904-03

Note: FC — Federal Court of Canada
BP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal, among its other duties, hears appeals from decisions of the Deputy Minister under the *Customs Act* and SIMA or of the Minister of National Revenue (the Minister) under the *Excise Tax Act*. The Tribunal hears appeals relating to the tariff classification and value for duty of goods imported into Canada and relating to the origin of goods imported from the United States and Mexico under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding or order concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA. Under the *Excise Tax Act*, a person may appeal to the Tribunal the decision of the Minister about an assessment or determination of federal sales tax or excise tax.

Although the Tribunal strives to be informal and accessible, there are certain procedures and time constraints that are imposed by law and by the Tribunal itself in order to provide quality service to the public in an efficient manner. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

Under the Tribunal's Rules of Procedure, the person launching the appeal (the appellant) normally has 60 days to submit to the Tribunal a document called a "brief." Generally, the brief states under which act the appeal is launched, gives an indication of the points at issue between the appellant and the Minister or Deputy Minister (in legal terminology, the Minister or the Deputy Minister is called the respondent) and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members. Taking into account the complexity and precedential nature of the matter at issue, certain appeals, especially those under the *Customs Act*, can be heard before one member of the Tribunal.

Hearings

An individual may present a case before the Tribunal in person, or be represented by legal counsel or by any other representative. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their case. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are questioned under oath or affirmation by the opposing parties, as well as by Tribunal members, in order to test the validity of their evidence. When all the evidence is gathered, parties may present arguments in support of their respective position.

The option of a file hearing is also offered to the appellant. Where a hearing is not required, the Tribunal may dispose of the matter on the basis of the written documentation before it. Rule 25 of the Tribunal's Rules of Procedure allows the Tribunal to proceed in this manner. Before deciding to proceed in this manner, the Tribunal requires that the appellant and respondent consent to disposing of the appeal by way of a file hearing and file with the Tribunal an agreed statement of facts in addition to their submissions. The Tribunal then publishes a notice of the file hearing in the *Canada Gazette* so that other interested persons can make their own views known.

The Tribunal also hears appeals by way of electronic transmission, either by teleconference or videoconference.

Teleconference hearings are used mainly to dispose of preliminary motions and jurisdictional issues where witnesses are not required to attend or give evidence.

Videoconference hearings are used as an alternative to holding hearings in remote locations across Canada or requiring parties from outside Ontario or Quebec to present themselves at the Tribunal's premises in Ottawa. This option of a videoconference hearing is generally used where there are no issues of credibility. The procedures are very similar to hearings held before the Tribunal at its premises. However, the Tribunal requires that written materials, exhibits, aids to arguments, etc., be filed with the Tribunal prior to the videoconference hearing.

Usually, within 120 days of the hearing, the Tribunal issues a decision on the matters in dispute, including the reasons for its decision.

If the appellant, the respondent or an intervener disagrees with the Tribunal's decision, the decision can be appealed to the Federal Court of Canada.

**Appeals
Considered in the
Last Fiscal Year**

During fiscal year 1998-99, the Tribunal heard 48 appeals of which 44 related to the *Customs Act*, 3 to the *Excise Tax Act* and 1 to SIMA. Decisions were issued in 90 cases, of which 30 were heard during fiscal year 1998-99.

Decisions on Appeals*

Act	Allowed	Allowed in Part	Dismissed	Dismissed in Part	Total
<i>Customs Act</i>	26	27	23	1	77
<i>Excise Tax Act</i>	2	-	9	-	11
SIMA	-	-	1	-	1

* Reference No. AP-98-055 is excluded.

Table 1 of this chapter lists the appeal decisions rendered in fiscal year 1998-99.

**Summary of
Selected
Decisions**

The following are summaries of a representative sample of significant decisions in appeals under section 67 of the *Customs Act*. These summaries have been prepared for general information purposes only and have no legal status.

***Honda Canada Inc. v.
The Deputy Minister
of National Revenue***

AP-97-111

*Decision:
Appeal dismissed
(January 11, 1999)*

This was an appeal pursuant to subsection 67(1) of the *Customs Act* involving the tariff classification of Honda H2013SC lawn tractors manufactured by Honda Inc. in the United States and imported by the appellant, a wholly owned subsidiary of Honda Inc.

The goods in issue originally entered as tractors under tariff item No. 8701.90.19 of Schedule I to the *Customs Tariff*. The Tribunal considered whether the goods in issue were properly classified under tariff item No. 8433.11.00 as powered mowers for lawns, parks or sports grounds, with the cutting device rotating in a horizontal plane, as determined by the respondent, or should have been classified under tariff item No. 8701.90.19 as other tractors, as claimed by the appellant. There was one intervener in this case, MTD Products Ltd. (MTD), which appeared in support of the respondent.

The appeal was dismissed. The Tribunal was of the view that the evidence showed that the goods in issue are constructed essentially for use with mower decks for mowing lawns. The Tribunal was also of the view that the goods in issue came within the wording of heading No. 84.33 and the relevant Section and Chapter Notes.

In arriving at its conclusion, the Tribunal found it useful to compare the goods in issue with those in *Steen Hansen Motorcycles Ltd. v. The Deputy Minister of National Revenue* in which the Tribunal concluded that various models of lawn tractors manufactured by The Murray Ohio Manufacturing Co. are not constructed essentially for pushing many different types of implements, but rather are constructed essentially for use with mower decks for cutting grass and come within the wording of heading No. 84.33 and the relevant Section and Chapter Notes. This comparison showed that the goods share very similar characteristics in terms of, for instance, weight, horsepower and tire size. While these characteristics may allow the goods in issue to operate, to some degree, with a snowblower attachment, this does not establish that they were constructed essentially for such a purpose. Furthermore, the Tribunal was of the view that characteristics of the goods in issue referenced above are quite different from those of the commercial machines that it considered in *Marubeni Canada Ltd. v. The Deputy Minister of National Revenue* and *Ford New Holland Canada Ltd. v. The Deputy Minister of National Revenue* in terms of, for instance, size, weight, horsepower and the market segment to which they are sold. Moreover, the manner in which appliances are put on and taken off the goods in issue contrasts greatly with the easy front-end hitch mechanism used in the commercial tractors considered by the Tribunal in *Marubeni* and *Ford New Holland*. In addition, the evidence submitted by other producers about their sales of snowblowers used with similar machines did not show significant use of those machines for purposes other than mowing lawns. In any event, the evidence about use did not approach the amount of use of different appliances reflected in *Marubeni* or *Ford New Holland*.

***Rigel Shipping
Canada Inc. v. The
Deputy Minister of
National Revenue***

AP-97-045

Decision:
Appeal allowed in part
(September 15, 1998)

This was an appeal under section 67 of the *Customs Act* in which the Tribunal considered the appraisal of the value for duty on three vessels, the *Emsstern* and the *Elbestern* which, when ordered in 1991, cost US\$18,238,460 each, and the *Jadestern* which, when ordered later in 1991, cost US\$19,140,460.

The vessels were built by MTW Schiffswerft GmbH (MTW) of Wismar, Germany, and delivered in 1992 (the *Emsstern* and the *Elbestern*) and early 1993 (the *Jadestern*) to Ultramar Ltd. (Ultramar), a Canadian refiner and marketer of petroleum products, primarily in Eastern Canada. In order to move its products from the refinery to the market, it requires access to tanker ships that have the capacity and ability to carry petroleum products in the St. Lawrence River and along Canada's east coast. In 1992, Ultramar contacted a ship broker and gave him instructions to search the world market to find tankers which would be suitable for its needs. He identified three chemical and petroleum tankers under construction by MTW (the Rigel vessels).

The ship broker met with representatives from Revenue Canada to decide upon the method of calculating the value for duty. Following a series of

communications, it was agreed that the usual method for calculating the value for duty, i.e. the transaction value method in section 48 of the *Customs Act*, would not be appropriate because, as the vessels were coming into Canada pursuant to a charter party agreement, there was no sale for export to Canada. Consequently, Revenue Canada decided, and the appellant agreed, to use the residual method found in section 53 of the *Customs Act*. In order to determine this value, Revenue Canada directed Ultramar to average the values indicated by two appraisals of the Rigel vessels. The two appraisals were averaged, and duty was paid on the amount of US\$11,280,000 for the *Emsstern* and the *Elbestern*, which were imported into Canada in November 1993, and on the amount of US\$12,150,000 for the *Jadestern*, which was imported into Canada in March 1994.

Following receipt of a complaint by the Canadian Shipowners Association, Revenue Canada re-appraised the value of the Rigel vessels. On April 14, 1997, the respondent issued re-appraised values of the vessels pursuant to subsection 63(3) of the *Customs Act* in the following amounts: US\$15,370,000 each for the *Emsstern* and the *Elbestern*; and US\$15,760,000 for the *Jadestern*.

The appeal was allowed in part. The Tribunal concluded that the respondent's calculation of the value for duty of the Rigel vessels was, in part, incorrect. The Tribunal was of the view that section 67 of the *Customs Act* allows it to substitute what it believes to be the correct value for duty and that it is not simply limited to accepting or rejecting the respondent's determination. Taking into account all of the evidence, the Tribunal concluded that the correct values on the date of importation were US\$14,860,926 each for the *Emsstern* and the *Elbestern* and US\$14,807,000 for the *Jadestern*. It was these amounts on which the applicable duty should have been paid.

***Atomic Ski Canada
Inc. and Wilson
Sports Canada v. The
Deputy Minister of
National Revenue***

*AP-97-030 and
AP-97-031*

*Decision:
Appeals allowed
(June 8, 1998)*

These were appeals under section 67 of the *Customs Act* in which the Tribunal considered the tariff classification of plastic shells for in-line skates. The issue in these appeals was whether the plastic shells for in-line skates were properly classified under tariff item No. 9506.70.12 as roller skates or, alternatively, under tariff item No. 6402.19.90 as other sports footwear, as determined by the respondent, or should have been classified under tariff item No. 6406.99.90 as other parts of footwear, as claimed by the appellants.

In allowing the appeals, the Tribunal concluded that, if it was possible to find that, absent the skates, a product could still be considered to have the essential character of roller skates and, therefore, be classified in heading No. 95.06 as roller skates, as argued by the respondent, the Explanatory Notes would not expressly exclude from that heading roller skates without the skates attached.

The Tribunal accepted that the goods in issue are committed for use as components in skating boots and, in turn, in-line skates. However, the Tribunal concluded that the goods in issue, presented on their own, without linings or buckles, lacked one of the principal features of footwear, that is, the ability to be worn as a covering for the foot and part of the leg, and could not be classified, pursuant to Rule 2 (a) of the *General Rules for the Interpretation of the Harmonized System*, as unassembled footwear with outer soles and uppers of rubber or plastics or, in this case, as unassembled skating boots, having the essential character of such footwear. As a result, the Tribunal was not persuaded that the goods in issue could be classified under tariff item No. 6402.19.90 as other sports footwear. Having determined that the goods in issue did not have the essential character of skating boots and could not, therefore, be classified under tariff item No. 6402.19.90, the Tribunal had further to determine whether the goods in issue could be classified under tariff item No. 6406.99.90 as other parts of footwear, as claimed by the appellants. The Tribunal was persuaded that both the skating boots, absent the skates, and the finished in-line skates met the definitions of “footwear.” It observed that the Explanatory Notes to heading No. 64.05 provide that the heading “**excludes** assemblies of parts (e.g., uppers, whether or not affixed to an inner sole) not yet constituting nor having the essential character of footwear as described in headings 64.01 to 64.05 (**heading 64.06**).” The Tribunal interpreted the Explanatory Notes to mean that, if the Tribunal found that the goods in issue were parts of the finished skating boots, which are covered by heading No. 64.02, then they should be classified in heading No. 64.06. In considering whether the goods in issue constituted parts of skating boots or in-line skates, the Tribunal observed that there was no universal test for determining whether a product was a part, and each case had to be determined on its own merits. The Tribunal noted that, in the past, it has considered that the following factors typically applied in the assessment of whether a product is a part: (1) whether the product is essential to the operation of another product; (2) whether the product is a necessary and integral component of the other product; (3) whether the product is installed in the other product; and (4) common trade usage and practice applied to the goods in issue. In the Tribunal’s view, the goods in issue were essential to and necessary and integral components of in-line skating boots. As such, the Tribunal was satisfied that the goods in issue should be classified under tariff item No. 6406.99.90 as other parts of footwear, namely, skating boots.

**Reference under
Section 70 of the
Customs Act**

On August 10, 1998, the Deputy Minister, pursuant to section 70 of the *Customs Act*, asked the Tribunal to render an opinion with respect to:

- the tariff classification of butteroil blends comprising less than 50 percent butteroil and more than 50 percent sugar (sucrose); and

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- the tariff classification of blends of butteroil and glucose and blends of butteroil and processing solids, containing less than 50 percent by weight of dairy content.

The Tribunal issued a notice of review (Reference No. AP-98-055) of the tariff classification of butteroil blends on August 18, 1998.

Briefs were filed by parties in favour of a change in the tariff classification of the goods in issue, as well as by those opposed to a change in the tariff classification. A public hearing relating to this reference was held from January 26 to 29, 1999. In the context of this reference, the Tribunal dealt with the preliminary issue of whether, in a reference under section 70 of the *Customs Act*, the Tribunal's disposition is a non-binding opinion, which the Deputy Minister may elect to follow or not, or a decision with the same force and effect as a decision made in an appeal under section 67. The Tribunal came to the view that proceedings which come to it by way of a reference pursuant to section 70 are in the nature of an appeal and that it has jurisdiction to issue an order, finding or declaration with the full force and effect of any other decision that it issues in an appeal under section 67.

On March 26, 1999, the Tribunal rendered its majority decision that butteroil blends comprising less than 50 percent butteroil and more than 50 percent sugar (sucrose) are classifiable under tariff item No. 2106.90.95 and that blends comprising less than 50 percent butteroil and more than 50 percent glucose are also classifiable under tariff item No. 2106.90.95. As for the classification of blends of butteroil and processing solids, the Tribunal came to the view that it was not possible to reach a definitive view on the classification, in light of the indeterminate and variable nature of ingredients which may go to make up the processing solids portion of such blends.

TABLE 1

Appeal Decisions Rendered Under Section 67 of the *Customs Act*, Section 81.27 of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 1998, and March 31, 1999

Appeal No.	Appellant	Date of Decision	Decision
Customs Act			
AP-97-073	Atlas Alloys, Division of Rio Algom Limited	April 23, 1998	Dismissed
AP-97-059	Canadian Fracmaster Ltd.	May 29, 1998	Dismissed
AP-97-030 and AP-97-031	Atomic Ski Canada Inc. and Wilson Sports Canada	June 8, 1998	Allowed
AP-93-392, AP-93-393, AP-94-001, AP-94-002, AP-94-007, AP-94-019, AP-94-020, AP-94-026, AP-94-028, AP-94-030, AP-94-033, AP-94-043, AP-94-055, AP-94-060, AP-94-064, AP-94-068, AP-94-077, AP-94-079, AP-94-097 and AP-96-118	Asea Brown Boveri Inc.	June 10, 1998	Allowed in part
AP-96-228	Hibernia Management and Development Company Ltd.	June 10, 1998	Allowed in part
AP-97-083 and AP-97-101	Nailor Industries Inc.	July 13, 1998	Dismissed
AP-97-013	General Mills Canada, Inc.	July 21, 1998	Allowed
AP-97-002	Flora Manufacturing & Distributing Ltd.	July 24, 1998	Allowed
AP-97-012	General Mills Canada, Inc.	July 24, 1998	Dismissed
AP-95-182	Leeds Neckwear Inc. and Leeds International Inc.	July 28, 1998	Allowed
AP-96-096 to AP-96-103	Style-Kraft Sportswear Limited	July 28, 1998	Allowed
AP-97-056	P & S Filtration Inc.	July 29, 1998	Allowed
AP-97-057	Zellers Inc.	July 29, 1998	Allowed
AP-97-110 and AP-97-113	Nicholson Equipment Ltd.	September 2, 1998	Allowed
AP-97-017, AP-97-053, AP-97-102 and AP-97-118	Pet Valu Canada Inc.	September 14, 1998	Allowed in part
AP-97-045	Rigel Shipping Canada Inc.	September 15, 1998	Allowed in part
AP-97-052	Flora Manufacturing & Distributing Ltd.	September 24, 1998	Dismissed
AP-97-058	Flora Manufacturing & Distributing Ltd.	September 24, 1998	Allowed
AP-96-079, AP-96-087 and AP-96-095	Advance Engineered Products Ltd.	September 25, 1998	Dismissed
AP-97-010	Hilary's Distribution Ltd.	September 25, 1998	Allowed
AP-97-038	Fonora Textile Inc.	September 25, 1998	Allowed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-97-048, AP-97-081 and AP-97-082	Cooper Industries (Canada) Inc. and Cooper Cameron Ltd.	September 25, 1998	Allowed
AP-97-029	Entrelec Inc.	September 28, 1998	Dismissed
AP-97-078	Jonic International Inc.	September 28, 1998	Dismissed
AP-97-122	Canadian Tire Corporation, Limited	September 29, 1998	Dismissed
AP-97-140	Manju Bhogal	October 7, 1998	Dismissed
AP-97-116	Gillette Canada Inc.	November 20, 1998	Dismissed
AP-97-033	Technical Glass Products	November 25, 1998	Dismissed
AP-97-100	Brother International Corporation (Canada) Ltd.	November 27, 1998	Dismissed in part
AP-97-117	Sanofi Canada Inc.	December 18, 1998	Dismissed
AP-97-070	Les Industries et Équipements Laliberté Ltée	December 23, 1998	Dismissed
AP-98-006	Burlodge Canada Ltd.	January 7, 1999	Allowed
AP-97-111	Honda Canada Inc.	January 11, 1999	Dismissed
AP-97-043	Douglas Anderson and Creed Evans	January 13, 1999	Dismissed
AP-97-062	Zellers Limited	February 8, 1999	Allowed
AP-98-007 and AP-98-010	Richards Packaging Inc. and Duopac Packaging Inc.	February 10, 1999	Dismissed
AP-95-097	Flextube Inc.	February 19, 1999	Allowed in part
AP-96-057	Catherine Roozen	March 1, 1999	Dismissed
AP-97-104	Transilwrap of Canada, Ltd.	March 3, 1999	Dismissed
AP-98-049	Soprema Inc.	March 5, 1999	Allowed
Excise Tax Act			
AP-94-352	Raymond Rioux Distribution	June 15, 1998	Dismissed
AP-96-217	Hi-Grove Holdings Ltd.	July 27, 1998	Allowed
AP-95-130	United Power Ltd.	August 25, 1998	Dismissed
AP-97-072	Kellogg Canada Inc.	August 28, 1998	Dismissed
AP-97-027	Movado Group of Canada, Inc.	August 31, 1998	Allowed
AP-90-156, AP-90-157 and AP-91-037 to AP-91-040	North American Steel Equipment Company Ltd.	September 25, 1998	Dismissed
Special Import Measures Act			
AP-96-083	Jarvis Imports and Sales Ltd.	December 7, 1998	Dismissed

TABLE 2

Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 1998, and March 31, 1999, and Pending as of March 31, 1999¹

Appeal No.	Appellant	Federal Court No.
AP-96-208 and AP-97-009	Philips Electronics Ltd.	A—230—98
AP-97-002	Flora Manufacturing & Distributing Ltd.	A—617—98
AP-97-010	Hilary's Distribution Ltd.	A—632—98
AP-97-029	Entrelec Inc.	A—755—98
AP-97-048, AP-97-081 and AP-97-082	Cooper Industries (Canada) Inc. and Cooper Cameron Ltd.	A—702—98
AP-97-052	Flora Manufacturing & Distributing Ltd.	A—720—98
AP-97-058	Flora Manufacturing & Distributing Ltd.	A—633—98
AP-97-078	Jonic International Incorporated	A—765—98
AP-97-100	Brother International Corporation (Canada) Ltd.	A—81—99

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all Tribunal decisions appealed to the Federal Court of Canada between April 1, 1998, and March 31, 1999.

TABLE 3

Decisions of the Federal Court of Canada Rendered Between April 1, 1998, and March 31, 1999¹

Appeal No.	Appellant	Federal Court No.	Outcome	Date
AP-91-082	Suntech Optics Inc.	T—2387—92	Appeal dismissed	January 14, 1999
AP-91-120	BASF Coatings & Inks Canada Ltd.	T—1092—93	Appeal allowed	April 6, 1998
AP-92-294	Shafer Valve Co. of Canada Ltd.	A—344—96	Appeal dismissed	April 28, 1998
AP-93-016	Therm-O-Comfort Co. Ltd.	T—1361—94	Appeal dismissed	July 31, 1998
AP-94-102	I.D. Foods Superior Corp.	A—536—95	Appeal quashed	April 29, 1998
AP-94-148	Suncor Inc.	T—699—97	Appeal allowed	July 17, 1998
AP-94-167	Security Card Systems Inc.	T—2728—95	Appeal allowed in part	July 3, 1998
AP-94-327	Double N Earth Movers Ltd.	T—698—97	Appeal allowed	July 17, 1998
AP-95-079	J.B. Multi-National Trade Inc.	A—865—96	Appeal discontinued	September 3, 1998
AP-95-123	PMI Food Equipment Group Canada, A Division of Premark Canada Inc.	A—198—97/ A—283—97	Appeal discontinued	January 18, 1999
AP-95-126 and AP-95-255	Mattel Canada Inc.	A—291—97/ A—292—97	Appeals allowed	January 13, 1999
AP-95-129	Carol Cable Company	A—617—96	Appeal dismissed	October 22, 1998
AP-95-170	Nalley's Canada Limited	A—47—97	Appeal dismissed	November 4, 1998
AP-95-182	Leeds Neckwear Inc. and Leeds International Inc.	A—624—98	Appeal discontinued	February 10, 1999
AP-95-197 to AP-95-202 and AP-95-206 to AP-95-212	Nike Canada Ltd.	A—905—97	Appeal allowed	January 13, 1999
AP-95-259	Paccar of Canada Ltd.	T—480—97	Appeal allowed	May 8, 1998
AP-96-016	Trudell Medical Marketing Limited	A—695—97	Appeal discontinued	November 3, 1998
AP-96-048	Canadian Optical Supply Company Ltd.	A—368—97	Appeal dismissed	February 22, 1999
AP-96-054	Sunbeam Corporation (Canada) Limited	A—342—97	Appeal dismissed	April 1, 1998
AP-96-096 to AP-96-103	Style-Kraft Sportswear Limited	A—625—98	Appeal discontinued	February 11, 1999
AP-96-205	Formica Canada Inc.	A—98—98	Appeal dismissed	February 25, 1999
AP-96-241 and AP-96-242	C.A.S. Sports International Inc. and Atomic Ski Canada Inc.	A—108—98	Appeal discontinued	March 22, 1999
AP-97-082	Cooper Industries (Canada) Inc.	A—702—98	Appeal discontinued	March 23, 1999

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all appeals that were decided between April 1, 1998, and March 31, 1999.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

The CITT Act contains broad provisions under which the government or the Minister of Finance may ask the Tribunal to conduct an inquiry on any economic, trade, tariff or commercial matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the Government or the Minister of Finance.

Dairy Blends

On June 30, 1998, the Tribunal submitted to the Government its report on the importation of dairy product blends outside the coverage of Canada's tariff-rate quotas. The report completed a public inquiry which was referred to the Tribunal on December 17, 1997, by the Governor in Council on the recommendation of the Minister of Finance, the Minister of Agriculture and Agri-Food and the Minister for International Trade.

The initiative for the inquiry came from increasing concerns of Canadian dairy farmers about imports of dairy product blends. Industry representatives requested that the Government of Canada address their particular concerns relating to butteroil/sugar blends.

In 1995, when Canada implemented its WTO commitments arising out of the Uruguay Round of multilateral trade negotiations, import quotas in support of supply management were converted into tariff-rate quotas. The butteroil blends which were at the centre of the Tribunal's inquiry were not covered by the former import quotas and were not subject to tariff-rate quotas.

The Tribunal noted that there were a number of factors that influenced the demand for imported dairy product blends in the domestic market. The most important of these factors was the cost savings that producers of ice cream and processed cheese achieve by using imported butteroil blends. Other factors included the security of supply, competition in the ice cream industry and certain technical benefits.

The Tribunal observed that the use of butteroil blends increased rapidly in the period from 1994 to 1996 and then almost doubled in 1997. In 1997, about 6.3 million kilograms of the imported butteroil blends were used in the manufacture of ice cream and processed cheese. This corresponded to approximately 3.1 million kilograms of butterfat. Expressed as a percentage of overall milk production in Canada in 1997, the imports were equivalent to about 1 percent of the butterfat produced for the fluid and industrial milk markets.

The Tribunal expected that the use of imported butteroil blends, to replace domestic butterfat, would increase in the years ahead, although at a slower pace than in recent years. Compared to a 1997 replacement level of 12 percent, the Tribunal considered that up to a maximum of 25 percent of the butterfat in ice cream and the replaceable butterfat in processed cheese could be supplied by imported butteroil blends.

As requested in its terms of reference, the Tribunal examined the domestic market for imports of dairy product blends, as well as their impact on the Canadian dairy industry. It also reviewed the legal, technical, regulatory and commercial considerations relevant to these imports. Finally, it identified options for the dairy farmers and the Government to deal with any problems raised by imports of butteroil blends. The Tribunal found that the following options, in addition to the status quo, were consistent with Canada's international rights and obligations:

- an appeal to the Tribunal by the dairy farmers of the classification of butteroil blends;
- a safeguard inquiry by the Tribunal pursuant to a complaint by the dairy farmers or a government reference;
- a special class price for butterfat for ice cream and processed cheese;
- a special class price for butterfat for domestic butteroil blends;
- compensation of the dairy farmers for their income losses; and
- a new tariff item for butteroil blends with a different tariff treatment.

The Tribunal came to the conclusion that none of the options available for addressing any problems raised by imports of butteroil blends were without cost, either to the dairy farmers or the Government. There are economic consequences for the dairy farmers of an open border for butteroil blends. The types of action available to the Government and the dairy farmers, however, are constrained by the rules of international trade. These same rules, which apply equally to all Members of the WTO, provide dairy farmers with increased certainty and protection. As well, the rules provide several avenues by which dairy farmers may seek relief from the effects of imported butteroil blends.

**Textile
Reference**

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, and on November 26, 1997, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

**Scope of the
Reference**

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, in its manufacturing operations. The textile inputs for which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of the schedule to the *Customs Tariff*. Since July 24, 1996, and at least until July 1, 1999, the following yarns are not included in the textile reference:

Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.

**Types of Relief
Available**

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, textile- and/or end-use-specific tariff provisions. In the case of requests for tariff relief on textile inputs used in the manufacture of women's swimsuits, co-ordinated beachwear and co-ordinated accessories only, the recommendation could include company-specific relief. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

Process

Domestic producers seeking tariff relief must file a request with the Tribunal. Producers must file with the request either samples of the textile input for which tariff relief is being sought or a National Customs Ruling from Revenue Canada covering the input. If the Tribunal determines that the request is properly documented, it will conduct an investigation to determine if it should recommend tariff relief.

**Filing and
Notification of a
Request**

Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice on its Web site announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.

This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as Revenue Canada, the Department of Foreign Affairs and International Trade, the Department of Industry and the Department of Finance. The notice is also published in the *Canada Gazette*.

In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.

To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits or questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of providing a basis for determining whether the tariff relief sought will maximize net economic gains for Canada.

In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.

The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to

the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Accordingly, the Tribunal will only distribute confidential information to counsel who are acting on behalf of a party and who have filed a declaration and undertaking.

Recommendations to the Minister

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within an earlier specified time frame which the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.

Request for Review

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.

Review on Expiry

Where the Minister of Finance has made an order for tariff relief subject to a scheduled expiry date, the Tribunal will, before the expiry date, issue a formal notice that the tariff relief provided by the order will expire unless the Tribunal issues a recommendation that tariff relief should be continued and the Minister of Finance implements the recommendation. The notice invites interested parties to file submissions for or against continuation of tariff relief.

If no opposition to the continuation of tariff relief is received, upon receipt of submissions and information supporting the request for continuation of tariff relief, the Tribunal may decide to recommend the continuation of tariff relief. Conversely, if no request for continuation of tariff relief is submitted, the Tribunal may decide to recommend the termination of tariff relief. If it appears that a more complete review is warranted, the Tribunal will conduct an investigation to consider whether all relevant factors which led it to recommend tariff relief

	<p>continue to apply and whether extending tariff relief under such conditions would continue to provide net economic benefits for Canada.</p>
Annual Status Report	<p>In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on February 11, 1999, with its fourth annual status report on the investigation process. The status report covered the period from October 1, 1997, to September 30, 1998.</p>
Recommendations Submitted During 1998-99	<p>During fiscal year 1998-99, the Tribunal issued 12 reports to the Minister of Finance which related to 17 requests for tariff relief. In addition, the Tribunal issued 3 reports further to reviews of recommendations that were previously issued. At year end, 15 requests were outstanding, of which investigations had been commenced in respect of 5 requests. Table 1 at the end of this chapter summarizes these activities.</p>
Recommendations in Place	<p>By the end of fiscal year 1998-99, the Government had implemented 59 recommendations by the Tribunal, of which 53 are still subject to tariff relief orders. Table 4 provides a summary of recommendations currently implemented.</p> <p>The implementation of Tribunal recommendations is made by adding new tariff items to the <i>Customs Tariff</i>. During 1998-99, these tariff items covered imports worth \$180 million (estimated) and provided tariff relief worth \$25 million (estimated), representing an increase of approximately 30 percent over 1997-98.</p> <p>A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.</p>
<p>Phantom Industries Inc. <i>TR-97-005</i> <i>Recommendation:</i> <i>Tariff relief not granted</i> <i>(May 8, 1998)</i></p>	<p>The Tribunal recommended to the Minister of Finance that tariff relief on importations of gimped yarns, consisting of a five-filament nylon yarn not greater than 15 decitex wound spirally around an elastomeric yarn (spandex), for use in the manufacture of women's hosiery, not be granted. In its report, the Tribunal indicated that there was no disagreement among the parties that there was production in Canada of gimped yarns that were identical, in terms of yarn construction, to those for which tariff relief was requested and that the debate centered on the performance problems of the yarns supplied by the domestic producer, Rubyco (1987) Inc. (Rubyco), to Phantom Industries Inc. (Phantom)</p>

and on the efforts that Phantom made to communicate these problems to Rubyco. The Tribunal found that, while there may well have been some operating differences between the domestic and the imported gimped yarns, Phantom had not demonstrated that sufficient efforts had been made to obtain domestic supply, nor that domestic yarns could not be substituted for the imported yarns. Under the circumstances, the Tribunal was unable to find that granting tariff relief would provide net economic gains to Canada.

Doubletex

TR-95-013A

*Recommendation:
Indeterminate tariff
relief
(December 21, 1998)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of woven fabric of 100 percent cotton, unbleached, bleached for dyeing only, of yarns with a twist of 1,050 turns per metre or more in the warp and/or the weft, for use by textile converters only to produce a dyed and finished fabric for the apparel industry, be granted for an indeterminate period of time. In its report, the Tribunal noted that Consoltex Inc. was the sole domestic producer opposed to the request and that the samples that it submitted were not fully substitutable for the finished fabrics made by Doubletex. The Tribunal concluded that, while some costs would be incurred by Consoltex Inc. should tariff relief be granted, these costs would be far outweighed by the benefits that would accrue to domestic converters, such as Doubletex.

Distex Inc.

TR-98-002

*Recommendation:
Indeterminate tariff
relief
(February 8, 1999)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of fabric, solely of 2-ply cotton yarns of different colours, having a decitex not exceeding 180 per single yarn, of a weight of 100 g/m² or more but not exceeding 200 g/m², certified by the exporter to have been knit on a Jacquard circular weft-knitting machine and to have been “double mercerized” (i.e. the yarns have been mercerized, knit into a fabric and subjected to a second mercerization process), for use in the manufacture of golf jerseys, be granted for an indeterminate period of time. The Tribunal noted that, based on the information available, there was no domestic production of identical or substitutable fabrics and that, consequently, there should be no economic cost to producers from granting the tariff relief requested. The Tribunal concluded that, considering the benefits to Distex Inc., granting the tariff relief requested would result in net economic benefits to Canada.

TABLE 1

Disposition of Requests for Tariff Relief Between April 1, 1998, and March 31, 1999

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-013A (previously TR-95-013)	Doubletex	Fabric	December 21, 1998	Indeterminate tariff relief
TR-96-014	Peerless Clothing Inc.	Fabric	January 28, 1999	Request withdrawn
TR-97-004, TR-97-007, TR-97-008 and TR-97-010	Blue Bird Dress of Toronto Ltd.	Fabric	July 23, 1998	Indeterminate tariff relief
TR-97-005	Phantom Industries Inc.	Yarn	May 8, 1998	Tariff relief not granted
TR-97-006	Peerless Clothing Inc.	Fabric and nonwoven	October 29, 1998	Indeterminate tariff relief
TR-97-011	Australian Outback Collection (Canada) Ltd.	Fabric	October 30, 1998	Indeterminate tariff relief
TR-97-012	Ballin Inc.	Fabric	In progress	
TR-97-013	Blue Bird Dress of Toronto Ltd.	Fabric	April 24, 1998	File closed
TR-97-014	Lenrod Industries Ltd.	Nonwoven	November 10, 1998	Indeterminate tariff relief
TR-97-015, TR-97-016 and TR-97-020	Helly Hansen Canada Limited	Fabric	March 19, 1999	Indeterminate tariff relief
TR-97-017	Helly Hansen Canada Limited	Fabric	December 22, 1998	Request withdrawn
TR-97-018	Helly Hansen Canada Limited	Fabric	December 22, 1998	Request withdrawn
TR-97-019	Helly Hansen Canada Limited	Fabric	December 22, 1998	Request withdrawn
TR-97-021	Wire Rope Industries Limited	Sisal core	January 5, 1999	Tariff relief not granted
TR-98-001	Cambridge Industries	Netting	February 12, 1999	Indeterminate tariff relief
TR-98-002	Distex Inc.	Fabric	February 8, 1999	Indeterminate tariff relief
TR-98-003	Zenobia Collections Inc.	Fabric	December 1, 1998	File closed

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-98-004, TR-98-005 and TR-98-006	Ladcal Investments Ltd., O/A Pintar Manufacturing, Nour Trading House Inc. and T.S. Simms and Company Limited	Fabric	In progress	
TR-98-007	Caulfeild Apparel Group Ltd.	Fabric	March 31, 1999	Indeterminate tariff relief
TR-98-008	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-009	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-010	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-011	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-012	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-013	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-014	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-015	Zenobia Collection Inc.	Fabric	Not yet initiated	
TR-98-016	Peerless Clothing Inc.	Fabric	March 24, 1999	Indeterminate tariff relief
TR-98-017	Jones Apparel Group Canada Inc.	Fabric	In progress	
TR-98-018	Utex Corporation	Fabric	Not yet initiated	
TR-98-019	Tribal Sportswear Inc.	Fabric	Not yet initiated	

TABLE 2

Notices of Expiry of Tariff Relief Recommendations Between April 1, 1998, and March 31, 1999

Expiry No.	Original Request No.	Textile Input	Status/Recommendations
TE-97-002	TR-94-005	100 percent polyester herringbone woven fabric	Review not warranted, no continuation of tariff relief
TE-98-001	TR-95-014	Cut warp pile fabrics	Review initiated (TA-98-003)
TE-98-002	TR-94-002	Certain ring-spun yarns	In progress

TABLE 3

Disposition of Reviews of Tariff Relief Recommendations Between April 1, 1998, and March 31, 1999

Review No.	Expiry No. (Original Request No.)	Textile Input	Date of Disposition	Status/Recommendations
TA-98-001	TE-97-004 (TR-95-009)	Certain dyed woven fabrics of rayon and polyester	May 14, 1998	Continuation of tariff relief
TA-98-002	TE-97-003 (TR-94-009)	VINEX FR-9B fabric	June 29, 1998	Continuation of tariff relief
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	January 13, 1999	Continuation of tariff relief

TABLE 4

Tariff Relief Recommendations in Place

Request No./ Review No.	Requester/Textile Input	Tariff Item(s)/Order in Council	Duration
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Indeterminate tariff relief
TR-94-002 and TR-94-002A	Kute-Knit Mfg. Inc.	5205.14.20 5205.15.20 5205.24.20 5205.26.20 5205.27.20 5205.28.20 5205.35.20 5205.46.20 5205.47.20 5205.48.20 5206.14.10 5206.15.10 5206.24.10 5206.25.10 5509.53.10 P.C. 1996-1089	Three-year tariff relief
TR-94-004	Woods Canada Limited	5208.52.10	Indeterminate tariff relief
TR-94-010	Palliser Furniture Ltd.	5806.20.10	Indeterminate tariff relief
TR-94-012	Peerless Clothing Inc.	5309.29.20	Indeterminate tariff relief
TR-94-013 and TR-94-016	MWG Apparel Corp.	5208.42.20 5208.43.20 5208.49.20 5513.31.10 5513.32.10 5513.33.10	Indeterminate tariff relief
TR-94-017 and TR-94-018	Elite Counter & Supplies	9943.00.00	Indeterminate tariff relief
TR-95-003	Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indeterminate tariff relief
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indeterminate tariff relief
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No./ Review No.	Requester/Textile Input	Tariff Item(s)/Order in Council	Duration
TR-95-009	Peerless Clothing Inc.	5408.21.10 5408.21.20 5408.22.21 5408.22.30	Indeterminate tariff relief
TR-95-010 and TR-95-034	Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20	Indeterminate tariff relief
TR-95-011	Louben Sportswear Inc.	5408.31.10 5408.32.20	Indeterminate tariff relief
TR-95-012	Perfect Dyeing Canada Inc.	5509.32.10	Indeterminate tariff relief
TR-95-013A (previously TR-95-013)	Doubletex	5208.11.30 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20	Indeterminate tariff relief
TR-95-036	Canadian Mill Supply Co. Ltd.	5208.21.20	Indeterminate tariff relief
TR-95-037	Paris Star Knitting Mills Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indeterminate tariff relief
TR-95-051	Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indeterminate tariff relief
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indeterminate tariff relief
TR-95-056	Sealy Canada Ltd.	3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No/ Review No.	Requester/Textile Input	Tariff Item(s)/Order in Council	Duration
TR-95-057 and TR-95-058	Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indeterminate tariff relief
TR-95-060	Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indeterminate tariff relief
TR-95-061	Camp Mate Limited	6002.43.30	Indeterminate tariff relief
TR-95-064 and TR-95-065	Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6002.43.10	Indeterminate tariff relief
TR-96-003	Venture III Industries Inc.	5407.61.92	Indeterminate tariff relief
TR-96-004	Acton International Inc.	5906.99.21	Indeterminate tariff relief
TR-96-006	Alpine Joe Sportswear Ltd.	P.C. 1998-1118	Six-year tariff relief
TR-96-008, TR-96-010 to TR-96-013	Les Collections Shan Inc.	P.C. 1997-1668	Five-year tariff relief
TR-97-001	Jones Apparel Group Canada Inc.	5407.91.10 5407.92.20 5407.93.10 5408.21.30 5408.22.40 5408.23.20 5408.31.30 5408.32.40 5408.33.10	Indeterminate tariff relief
TR-97-002 and TR-97-003	Universal Manufacturing Inc.	5208.43.30 5513.41.20	Indeterminate tariff relief
TR-97-006	Peerless Clothing Inc.	5407.51.30 5903.90.22 5903.90.23 5903.90.24 6002.43.40 6002.43.50	Indeterminate tariff relief
TR-97-004, TR-97-007, TR-97-008 and TR-97-010	Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20	Indeterminate tariff relief
TR-97-011	Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16	Indeterminate tariff relief
TR-97-014	Lenrod Industries Ltd.	5603.93.40	Indeterminate tariff relief

Recommendations in Place (cont'd)

Request No./ Review No.	Requester/Textile Input	Tariff Item(s)/Order in Council	Duration
TR-98-001	Cambridge Industries	5608.19.20	Indeterminate tariff relief
TA-98-001	Certain dyed woven fabrics of rayon and polyester	5408.31.20 5408.32.30	Indeterminate tariff relief
TA-98-002	Vinex FR-9B fabric	5512.99.10	Indeterminate tariff relief
TA-98-003	Woven cut warp pile fabrics	5801.35.10	Indeterminate tariff relief

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may challenge federal government procurement decisions that they believe have not been made in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT or the AGP. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, and January 1, 1996, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to resolve the issue first with the government institution responsible for the procurement. When this process is not successful or a supplier wants to deal directly with the Tribunal, the complainant may ask the Tribunal to consider the case by filing a complaint within the prescribed time limit.

When the Tribunal receives a complaint, it reviews the submission against the criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct these within a specified time limit. If the Tribunal decides to conduct an inquiry, the government institution and all other interested parties are sent a formal notification of the complaint. An official notice of the complaint is also published in *Government Business Opportunities* and the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal, unless the government institution certifies that the procurement is urgent or that the delay would be against the public interest.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a Government Institution Report (GIR) responding to the allegations. The complainant is then sent a copy of the GIR and has seven days to submit comments. These are forwarded to the government institution and any interveners.

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of

a Staff Investigation Report. This report is circulated to the parties for their comments. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant for filing and proceeding with the bid challenge and/or costs for preparing the bid. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal in its determination are to be implemented to the greatest extent possible.

Summary of Procurement Review Activities

	1997-98	1998-99
CASES RESOLVED BY OR BETWEEN PARTIES		
Resolved Between Parties	1	-
Withdrawn	9	6
Abandoned While Filing	<u>2</u>	<u>4</u>
Subtotal	12	10
INQUIRIES NOT INITIATED OR CONTINUED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	8	6
Late Filing	4	7
No Valid Basis	<u>12</u>	<u>4</u>
Subtotal	24	17
CASES DETERMINED ON MERIT		
Complaint not Valid	9	14
Complaint Valid	<u>7</u>	<u>10</u>
Subtotal	16	24*
IN PROGRESS	<u>11</u>	<u>15</u>
TOTAL	63	66

* The Tribunal actually issued 21 written determinations which related to 24 procurement complaints.

**Summary of
Selected
Determinations**

During fiscal year 1998-99, the Tribunal issued 21 written determinations of its findings and recommendations which related to 24 procurement complaints. In 9 of the 21 written determinations, the complaints were determined to be valid or valid in part. In these cases, various remedies were granted in the form of cost awards or recommendations. Twelve other cases were in progress at year end, and two cases were being filed. Table 1 at the end of this chapter summarizes these activities, as well as those cases resolved by or between parties.

Of the cases heard by the Tribunal in carrying out its procurement review functions, certain decisions stand out from among the others because of the legal significance of the cases. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only and have no legal status.

Frontec Corporation

PR-97-035

*Determination:
Complaint dismissed/
Complaint not valid
(May 6, 1998)*

The Tribunal made a determination with respect to a complaint filed by Frontec Corporation (Frontec) concerning a solicitation of the Department of Public Works and Government Services (the Department). The solicitation was for operation and maintenance services for the 5-Wing Goose Bay military airfield, Newfoundland, for the Department of National Defence.

Frontec alleged that, contrary to the provisions of the AIT, its proposal was unfairly and improperly excluded from the subject solicitation because of an unfair, improper or inconsistent evaluation by the Department.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the complaint was not valid.

**Lotus Development
Canada Limited,
Novell Canada, Ltd.
and Netscape
Communications
Canada Inc.**

*PR-98-005, PR-98-006
and PR-98-009*

*Determination:
Complaints dismissed/
Lack of jurisdiction
(August 14, 1998)*

The Tribunal made a determination with respect to complaints filed by Lotus Development Canada Limited, Novell Canada, Ltd. and Netscape Communications Canada Inc. (the complainants) concerning a solicitation of the Department of Public Works and Government Services (the Department) for the procurement of a Microsoft NT server, a BackOffice server and BackOffice client access licences for the Department of Foreign Affairs and International Trade. The Department proceeded on a limited tender basis due to the urgency of the requirement and for national security reasons.

The complainants alleged that the procurement process was flawed because more than one supplier was capable of supplying the requirement.

After careful consideration of the applicable legislation, the requirements of NAFTA, the AGP and the AIT and the positions of the parties, the Tribunal

**Judicial Reviews
of Procurement
Decisions**

***Jastram
Technologies Inc.***

PR-98-008

*Determination:
Inquiry not initiated/
Late filing
(June 17, 1998)*

determined that it did not have jurisdiction to continue its inquiries into these complaints, and the complaints were dismissed.

The Tribunal made a decision with respect to a complaint filed by Jastram Technologies Inc. (Jastram) concerning a solicitation of the Department of Public Works and Government Services (the Department) for specialized batteries, on behalf of the Department of National Defence.

Jastram alleged that the Department failed to clearly identify how equivalency would be determined.

Having examined the evidence contained in the complaint, the Tribunal decided not to initiate an inquiry into this complaint because it was not filed within the time limits for filing a complaint set out in section 6 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*. Jastram has appealed this decision to the Federal Court of Canada.

Corel Corporation

*PR-98-012 and
PR-98-014*

*Determination:
Complaints valid
(October 26, 1998)*

The Tribunal made a determination with respect to two complaints filed by Corel Corporation (Corel) concerning a solicitation of the Department of Public Works and Government Services (the Department). The solicitation was for an enterprise licence for an office automation suite for Revenue Canada.

Corel alleged that the Department created an evaluation framework for the Request for Proposal that was biased in favour of the incumbent, Microsoft Corporation.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the procurement was not conducted according to NAFTA, the AGP and the AIT and that, therefore, the complaints were valid.

The Tribunal recommended, as a remedy, that the Department issue a new solicitation for the procurement or, in the alternative, that the Department develop jointly with Corel a proposal for compensation.

The Department has appealed the Tribunal's determination to the Federal Court of Canada.

The Federal Court of Canada dismissed applications by both the Attorney General of Canada (on behalf of Defence Construction Canada) and I.C.S. International Code Fire Services Inc. to review a decision by the Tribunal in File No. PR-97-008, *Symtron Systems Inc.*

On September 28, 1998, the Federal Court of Canada made a decision (Court File No. T—944—98) relating to a Tribunal case (File No. PR-97-034, *Wang Canada Limited*) in which the Department of Public Works and Government Services decided not to implement the Tribunal's recommendation to award the contract at issue to Wang Canada Limited. The Federal Court of Canada quashed the decision not to implement and ordered the Department to follow the Tribunal's recommendation.

Table 2 lists the procurement decisions that were appealed to or decided by the Federal Court of Canada during fiscal year 1998-99.

TABLE 1

Disposition of Procurement Complaints Between April 1, 1998, and March 31, 1999

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-97-033	IBM Canada Ltd.	December 11, 1997	Decision issued April 24, 1998 Complaint valid
PR-97-035	Frontec Corporation	December 22, 1997	Decision issued May 6, 1998 Complaint not valid
PR-97-036	Novus Incorporated	December 29, 1997	Complaint withdrawn
PR-97-037	Tactical Technologies Inc.	December 31, 1997	Decision issued April 30, 1998 Complaint valid in part
PR-97-040	Société de coopération pour le développement international	January 22, 1998	Decision issued April 9, 1998 Complaint not valid
PR-97-041	Mirtech International Security Inc.	January 28, 1998	Decision issued May 15, 1998 Complaint not valid
PR-97-045	Flolite Industries	February 6, 1998	Decision issued May 8, 1998 Complaint not valid
PR-97-047	Valcom Ltd.	February 12, 1998	Order issued April 21, 1998 Complaint dismissed/Late filing
PR-97-051	Safety Projects International Inc.	March 12, 1998	Decision issued June 18, 1998 Complaint not valid
PR-97-052	PeopleSoft Canada Company Limited	March 16, 1998	Complaint withdrawn
PR-97-054	Bell Canada	March 27, 1998	Decision issued July 13, 1998 Complaint valid
PR-98-001	SHL Systemhouse	April 29, 1998	Complaint withdrawn
PR-98-002	Installation Globale Normand Morin & Fils Inc.	May 1, 1998	Decision issued August 21, 1998 Complaint valid
PR-98-003	Premium DataScan Services, Inc.	May 8, 1998	Decision issued August 12, 1998 Complaint not valid
PR-98-004	Rogers Enterprises Ltd.	May 11, 1998	Not accepted for inquiry/No reasonable indication of a breach
PR-98-005, PR-98-006 and PR-98-009	Lotus Development Canada Limited, Novell Canada, Ltd. and Netscape Communications Canada Inc.	May 25 and 26 and June 1, 1998	Decision issued August 14, 1998 Complaints dismissed
PR-98-007	Safety Projects International Inc.	May 26, 1998	Decision issued August 24, 1998 Complaint not valid
PR-98-008	Jastram Technologies Inc.	June 1, 1998	Not accepted for inquiry/Late filing
PR-98-010	M.E.C. Systems Inc.	June 4, 1998	Not accepted for inquiry/Late filing
PR-98-011	Evans	June 5, 1998	Abandoned while filing

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-98-012 and PR-98-014	Corel Corporation	June 12 and July 14, 1998	Decision issued October 26, 1998 Complaints valid
PR-98-013	E.W. Consulting Services Corp.	July 9, 1998	Not accepted for inquiry/Not a designated entity
PR-98-015	3M Canada Company	July 21, 1998	Not accepted for inquiry/Not a potential supplier
PR-98-016	Teknion Furniture System	July 29, 1998	Complaint withdrawn
PR-98-017	3M Canada Company	August 7, 1998	Not accepted for inquiry/Not a designated contract
PR-98-018	Feriby Marine	August 26, 1998	Not accepted for inquiry/Late filing
PR-98-019	Amdahl	August 28, 1998	Complaint withdrawn
PR-98-020	Giga-Tron Associates Ltd.	August 28, 1998	Not accepted for inquiry/Late filing
PR-98-021	Transpolar Technology Corporation	September 10, 1998	Not accepted for inquiry/Not a designated contract
PR-98-022	SHL Systemhouse	September 17, 1998	Not accepted for inquiry/No denial of relief
PR-98-023	Marcomm Fibre Optics Inc.	September 24, 1998	Decision issued December 7, 1998 Complaint not valid
PR-98-024	Atlantic Safety Centre	September 25, 1998	Abandoned while filing
PR-98-025	M.D. Heat Techs Inc.	September 28, 1998	Decision issued December 3, 1998 Complaint not valid
PR-98-026	Krista Dunlop & Associates	October 9, 1998	Not accepted for inquiry/Late filing
PR-98-027	Service Star Building Cleaning Inc.	October 23, 1998	Decision issued January 22, 1999 Complaint valid
PR-98-028	Spacesaver Corporation	October 27, 1998	Decision issued January 11, 1999 Complaint valid
PR-98-029	Doran Canadian Expo Consortium	November 2, 1998	Decision issued February 12, 1999 Complaint not valid
PR-98-030	Valcom Ltd.	November 6, 1998	Not accepted for inquiry/No reasonable indication of a breach
PR-98-031	Service Star Building Cleaning Inc.	November 17, 1998	Decision issued February 12, 1999 Complaint not valid
PR-98-032	Polaris Inflatable Boats Canada Inc.	November 19, 1998	Decision issued March 8, 1999 Complaint valid
PR-98-033	Polaris Inflatable Boats Canada Inc.	November 19, 1998	Decision issued March 8, 1999 Complaint valid
PR-98-034	Keystone Supplies Company	December 1, 1998	Accepted for inquiry

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-98-035	Keystone Supplies Company	December 1, 1998	Accepted for inquiry
PR-98-036	Colebrand Limited	December 7, 1998	Not accepted for inquiry/Not a designated contract
PR-98-037	ITS Electronics	January 4, 1999	Accepted for inquiry
PR-98-038	MIL Systems	January 5, 1999	Accepted for inquiry
PR-98-039	Wescam Inc.	January 19, 1999	Accepted for inquiry
PR-98-040	Cougar Aviation Limited	January 22, 1999	Accepted for inquiry
PR-98-041	Energy and Environmental Analysis, Inc.	January 28, 1999	Complaint withdrawn
PR-98-042	Discover Training Inc.	February 1, 1999	Accepted for inquiry
PR-98-043	NFC Canada Limited	February 2, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-98-044	Ultimatrol Technologies Inc.	February 2, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-98-045	Ruiter Construction Ltd.	February 5, 1999	Accepted for inquiry
PR-98-046	Deloitte & Touche Consulting Group	February 8, 1999	Accepted for inquiry
PR-98-047	Novell Canada, Ltd.	February 11, 1999	Accepted for inquiry
PR-98-048	Service Star Building Cleaning Inc.	February 16, 1999	Abandoned while filing
PR-98-049	Malatest & Associates Ltd.	February 25, 1999	Abandoned while filing
PR-98-050	Douglas Barlett Associates Inc.	March 1, 1999	Accepted for inquiry
PR-98-051	National Airmotive Corporation	March 10, 1999	Accepted for inquiry
PR-98-052	Marathon Management Company	March 11, 1999	Accepted for inquiry
PR-98-053	KPMG Consulting Services	March 17, 1999	Not accepted for inquiry/Late filing
PR-98-054	Mediascan	March 22, 1999	Being filed
PR-98-055	Mxl Technologies Ltd.	March 31, 1999	Being filed

TABLE 2

Cases Before the Federal Court of Canada Between April 1, 1998, and March 31, 1999

File No.	Complainant	Appellant	File No./ Status
PR-97-008	Symtron Systems Inc.	I.C.S. International Code Fire Services Inc.	A—700—97 Application dismissed
PR-97-008	Symtron Systems Inc.	Attorney General of Canada	A—687—97 Application dismissed
PR-98-008	Jastram Technologies Inc.	Jastram Technologies Inc.	A—406—98
PR-98-012 and PR-98-014	Corel Corporation	Attorney General of Canada	A—696—98
PR-98-043	NFC Canada Limited	NFC Canada Limited	T—515—99

CHAPTER VII

FINDING THE RIGHT PROCEDURAL BALANCE IN SIMA INQUIRIES

Introduction

The Tribunal is a quasi-judicial body which has rules and procedures similar to those of a court of law, but they are not quite as strict or formal. It is constituted in this way as a court of easy access, in part, so that large and small companies alike may readily and effectively avail themselves of the rights that they have under SIMA to take and respond to trade action involving dumped and subsidized imports.

Indeed, the size and complexity of cases which come before the Tribunal vary widely. There are cases brought by large, well-known Canadian firms, involving hundreds of millions of dollars in international trade, and cases brought by small, privately held firms, involving no more than a few hundred thousand dollars in trade. The former cases typically involve numerous parties, with each represented by legal teams from some of the largest firms in the country. The smaller cases typically involve few parties, not all of which may be represented by counsel.

Clearly, the Tribunal's stakeholders have widely different levels of understanding of the complexities of trade law and widely different levels of financial resources to apply to the exercise of their legal rights. The challenge for the Tribunal, from a procedural standpoint, is to put in place a process that responds fairly, efficiently and effectively to the different needs and circumstances of all of its stakeholders.

This procedural challenge requires the Tribunal to strike a balance between often conflicting pressures. For example, while the Tribunal may strive to streamline its procedures, to keep them simple and understandable and to keep costs down, the requirements of fairness and natural justice impose certain minimum requirements that some stakeholders may perceive as legalistic, complex and costly. Moreover, while the Tribunal strives to conduct an open and transparent process, it must at the same time ensure that there is no public disclosure of any party's confidential information which could cause that party commercial harm.

Achieving a proper balance of these opposing procedural demands requires constant vigilance and monitoring by the Tribunal. In this context, over the past

Adapting to a Changing Environment

several years, the Tribunal has used a variety of consultative processes to obtain the views of its stakeholders on its existing procedures and proposed changes to those procedures. These include holding bi-annual meetings between the trade bar and the Tribunal; conducting surveys of stakeholders to obtain their views and opinions on procedural matters; and organizing workshops for stakeholders on specific procedural issues.

Following feedback from its stakeholders, the Tribunal has made several adjustments to its inquiry procedures over the past few years. Generally speaking, the thrust of these changes was to improve the quality and flow of information that is collected and exchanged by the Tribunal and the parties in the period leading up to the hearings in inquiries and reviews. The following section will describe the initiatives which the Tribunal has undertaken, the specific changes which have been made and the reasons for those changes.

The Tribunal was established in 1989, as part of a reorganization of Canada's trade institutions. Specifically, the Tribunal replaced and took over the responsibilities of the Canadian Import Tribunal, the Tariff Board and the Textile and Clothing Board. The Tribunal's creation also coincided with the implementation of the *Canada-United States Free Trade Agreement* (the FTA) along with its unique and novel approach to trade dispute resolution - the binational panel appeal process. Under the binational panel appeal process, Tribunal decisions in SIMA cases, which were reviewable by the Federal Court of Canada, could alternatively be appealed, by Canadian or US companies, to a binational panel of trade specialists. The binational panel mechanism was, of course, subsequently brought forward into NAFTA when the FTA was expanded to include Mexico.

The new binational panel appeal process took little time to make its presence felt, as counsel were eager to test it out as an alternative appeal route. By the early 1990s, binational panels had rendered several major decisions on appeals of Tribunal anti-dumping and countervailing decisions. It was apparent from these early decisions that the binational panel appeal process had placed Canadian anti-dumping/countervailing inquiries under a heightened degree of scrutiny and oversight. At about the same time, the Tribunal's inquiries were becoming more litigious, as parties, through their counsel, sought to assert their claims and rights more aggressively than in the past. This increased litigation may have been prompted, at least to some extent, by the evolution of charter cases and other developments in Canadian administrative law.

All of these developments contributed to altering the Tribunal's operational environment in a way that tended to foster an increase in the length and

complexity of Tribunal hearings, a growth in the information burden on parties and a corresponding expansion in the size and complexity of the Tribunal's inquiry record. In turn, these changes were accompanied by increasing costs for all participants. By 1994, the Tribunal recognized that the increasing costs and complexity of its inquiries, if not stemmed or reversed, could undermine the kind of accessibility that the Canadian anti-dumping/countervailing regime was intended to provide. While the concern over costs and complexity applied to all stakeholders, smaller companies with limited resources seemed especially vulnerable. Accordingly, in the fall of 1994, the Tribunal established an internal committee to conduct a full review of Tribunal procedures in SIMA inquiries and reviews with a view to proposing ways and means of making the process less costly and more efficient, without compromising the principles of fairness and transparency.

Over the next two years, the Tribunal prepared a number of discussion papers on proposed changes which were circulated to and discussed with stakeholders. In the fall of 1996, the Tribunal implemented a number of significant changes, ranging from those relating to scheduling and time management to those which addressed the way in which information is collected, exchanged and recorded in the Tribunal's inquiries and reviews.

In terms of scheduling and time management, the Tribunal decided that the key dates for the filing and distribution of information would be advanced so that parties would have more time to review material in advance of the hearing. New procedures were also announced for more strictly enforcing filing deadlines for questionnaires and submissions. The Tribunal also decided that hearing schedules should be subject to shorter and stricter time limits. Beyond these scheduling and time management issues, there were other substantive changes relating to information collection and distribution, and protection of confidential information which are elaborated below.

Information Issues

Questionnaires

A first important change dealt with expanding the investigative activities of the Tribunal. More specifically, it was decided that the Tribunal would formally seek the input of parties in the design of the various manufacturer, importer, exporter and purchaser questionnaires which it used to gather key statistical and other information in SIMA inquiries and reviews. Although the Tribunal had sometimes, on an *ad hoc* basis, sought the views of parties in the past, the consultations which took place were generally limited to a specified narrow range of questionnaire issues.

In formalizing and broadening the consultation process, the objective was to enable the Tribunal to customize its questionnaires to the particular issues and

Requests for Information	<p>information requirements of each case, having regard to the capabilities of the parties to provide the necessary information, in a timely manner, without undue burden. Consultations would also tend to reduce the likelihood of collecting redundant and unnecessary information. Moreover, it was felt that, in many instances where parties required information that would assist in the Tribunal's inquiry or review, it would be more effective and efficient and, hence, less costly for the overall process if the Tribunal assumed responsibility, through its questionnaires, for gathering the information.</p> <p>A second significant change involved establishing a process for the orderly exchange of requests for information (RFIs) between parties prior to a hearing. Under the previous procedures, parties had usually sought additional information from each other in the period leading up to the hearing, but there were no set time frames or rules for these exchanges. As a consequence, there tended to be a continual, but unscheduled, flow of requests for information between parties throughout the inquiry. Furthermore, the problems which inevitably arose in connection with these exchanges had to be adjudicated by the Tribunal on an <i>ad hoc</i> basis. These exchanges and the related problems often spilled into hearings, disrupting and prolonging them.</p> <p>Under the proposed RFI procedures, specific time frames for the process were established, providing for the process to be completed well before the hearing. Specific rules were also created to govern the exchanges, including the manner and time frames within which the Tribunal would dispose of parties' objections to RFIs. The proposals thus incorporated the RFI process into the Tribunal's formal inquiry schedule in a way which, it was hoped, would improve the information base for the inquiry and, at the same, encourage shorter, more focused and less costly hearings.</p>
Fine Tuning	<p>The above procedures were implemented by the Tribunal with the understanding that their effectiveness would be subject to ongoing monitoring and further consultation with stakeholders. After the new procedures were applied in the first few cases, it became apparent that there were certain problems which needed to be addressed. In particular, the Tribunal noted that the new RFI procedure had resulted almost immediately in a substantial increase in the scope and volume of information requests. Responding to these requests represented a substantial additional burden on parties. Moreover, while some of the information generated through the RFI process was useful, a significant proportion was of marginal or no relevance, in the Tribunal's estimation.</p> <p>Following discussions with stakeholders, the Tribunal concluded that the RFI process, as originally conceived, was too open ended and unsupervised in terms</p>

of the scope and nature of the information that parties could request from each other. Accordingly, the Tribunal decided to control excessive requests by requiring parties to submit their questions first to the Tribunal for its consideration, together with an explanation as to why the question was relevant. Only those questions whose relevance the Tribunal accepted would be forwarded to parties for response, subject to any objections that parties might have, according to a specified objection procedure. In the cases heard subsequent to these amendments, the RFI process seems to have worked well in generating useful information without undue costs and burden on the parties, both in the Tribunal's estimation and that of stakeholders that have provided feedback to the Tribunal.

Confidentiality Issues

As often happens, changes in one area may have unintended or unanticipated effects in other areas. For example, while the RFI process enhanced the information base for inquiries, it also raised concerns about the confidentiality of some of the information provided. This was particularly true with respect to documents such as future-oriented company business plans and forecasts. These documents contained strategic information that parties felt could be extremely damaging to their commercial interests if they were disclosed to their competitors.

As a result of these and other related confidentiality concerns, the Tribunal re-examined its confidentiality procedures, over the past year, in consultation with its stakeholders. This re-examination will culminate with the issuing of a guideline and practice notice, in 1999, on the designation and use of confidential information in Tribunal proceedings. Currently, this guideline is under discussion with stakeholders.

This guideline reaffirms the Tribunal's commitment to conducting transparent inquiries with as much information as possible on the public record. At the same time, it reiterates the importance which the Tribunal has always accorded to the protection of commercially sensitive information and summarizes the measures which are already in place to safeguard the legitimate confidentiality concerns of its stakeholders. However, the Tribunal recognizes that there is a need to adjust the existing balance between the opposing requirements of transparency and confidentiality. To this end, the draft guideline contains a number of initiatives.

Filing of Partial Documents

A Tribunal questionnaire or an RFI may sometimes ask parties to produce voluminous documents, including highly sensitive business plans and forecasts. In consultations with stakeholders, concerns were expressed not only over the risks of disclosure of commercially sensitive information but also over the costs and burdens of having to produce entire sets of documents, whether confidential or not, when only a small number of pages may be relevant or necessary in a particular case.

	<p>Accordingly, to address the issues of risk, burden and costs, the draft guideline announces a procedure whereby counsel who is being asked to provide information on a client's behalf could request that counsel seeking the information view the material before filing, at an agreed upon location, to determine which, if any, of it is needed. The procedure envisages that parties will, at least initially, attempt to work out an agreement amongst themselves on the viewing and filing of documents. However, where such agreement is not possible, the Tribunal, at a party's request, will decide whether and how a viewing should take place before any documents are filed.</p>
<p>Restricted Access to Experts</p>	<p>To further safeguard confidential documents, the draft guideline also reiterates that, in certain circumstances, the Tribunal will agree to restrict access to the confidential file by certain persons, such as independent economic and financial experts. Without such restrictions, such persons, when retained by counsel to assist in case preparations, would be granted access to the full confidential file where they had given the required declarations and undertakings not to disclose confidential information. Where such restrictions were granted, the Tribunal would limit experts' access to the confidential record only to that portion which is necessary for them to provide their advice and analysis.</p>
<p>Designation of Confidential Information</p>	<p>At the same time as announcing these new confidentiality safeguards, the draft guideline also contains a draft practice notice which conveys the Tribunal's concerns about an increase in the amount of information being designated as confidential in some of its inquiries. This has affected the Tribunal's ability to put information on the public record and conduct hearings open to the public. It also undermines the Tribunal's ability to issue reasons for decision which publicly disclose all relevant information relied upon by it when coming to its decisions.</p> <p>Accordingly, the draft practice notice reminds parties of their obligation to provide non-confidential summaries of information that they wish to designate as confidential. It also notes the Tribunal's authority to disregard such information where parties are unable, if challenged, to show that the confidentiality designation is justified. To assist persons and counsel in deciding what information can be designated confidential, the notice goes on to provide a non-exhaustive list of the type of information that has typically been considered to be public.</p>
<p>Selective Disclosure of Account-Specific Injury Allegations</p>	<p>The draft practice notice also addresses the issue of account-specific injury allegations which frequently contain sensitive information. While recognizing the confidential nature of these allegations, the Tribunal indicates that the requirements of fairness and natural justice oblige a certain minimum amount of</p>

Conclusion

information to be disclosed to the person against whom the allegation is made, in order for that person to respond effectively. This information includes the name of the account or customer, the product in issue, the date of the event and the source of the product. The notice advises parties that failure to make such disclosure could result in the Tribunal not taking the injury allegation into account or giving less weight to the allegation.

Over the past few years, the Tribunal has made numerous adjustments to its SIMA inquiry and review procedures in close consultation with stakeholders. The changes made reflect the Tribunal's commitment to facilitating access to the system for all stakeholders by reducing costs, burden and complexity without compromising fairness. As well, they embody the Tribunal's determination to ensure confidence and security in the system through effective protection of confidential information, while still maintaining the highest possible degree of openness and transparency in its inquiries and reviews.

The next two years also promise to be a period of transition, as the SIMA legislative changes outlined in Chapter II are implemented. In addition to the amendments made to the Tribunal's Rules of Procedure, this will require further amendments to existing procedures. The Tribunal will apply the changes in the same spirit of cooperation with stakeholders that has characterized past changes. Some of the changes arising from the legislative amendments will allow the Tribunal to be more efficient in its operations. Others will pose a challenge to ensure that they do not increase the cost of proceedings. The Tribunal is confident that the procedural framework that it now has in place will enable it to meet this challenge effectively and maintain a cost-effective access to SIMA proceedings. Moreover, the Tribunal will carry forward the same degree of commitment and determination to the principles of access, fairness, security and transparency that have been, and will remain, the hallmarks of its procedures.

PUBLICATIONS

October 1996

Textile Reference Guide

June 1998

An Inquiry in the Importation of Dairy Product Blends Outside the Coverage of Canada's Tariff-rate Quotas

July 1998

Annual Report for the Fiscal Year Ending March 31, 1998

July 1998

Procurement Review Process: A Descriptive Guide

March 1999

Textile Reference: Annual Status Report

Bulletin

Vol. 10, Nos. 1 - 4

**Brochure and
Information
Documents**

A brochure and a series of documents designed to inform the public of the work of the Tribunal are available. They include:

- *Introductory Guide on the Canadian International Trade Tribunal*
- *Information on Appeals from Customs, Excise and SIMA Decisions*
- *Information on Dumping and Subsidizing Inquiries and Reviews*
- *Information on Textile Tariff Investigations*
- *Information on Procurement Review*
- *Information on Import Safeguard Inquiries and Measures*
- *Information on Economic, Trade and Tariff Inquiries*

Publications can be obtained by contacting the Secretary, Canadian International Trade Tribunal, Standard Life Centre, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7 (613) 993-3595 or they can be accessed on the Tribunal's Web site.