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# **ANNUAL REPORT**

**FOR THE FISCAL YEAR ENDING  
MARCH 31, 2000**

**Canadian  
International  
Trade Tribunal**

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May 31, 2000

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, 2000.

Yours sincerely,

Pierre Gosselin



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# TABLE OF CONTENTS

<b>Chapter I</b>	Tribunal Highlights in Fiscal Year	1
<b>Chapter II</b>	Mandate, Organization and Activities of the Tribunal	5
<b>Chapter III</b>	Dumping and Subsidizing Injury Inquiries and Reviews	11
<b>Chapter IV</b>	Appeals	27
<b>Chapter V</b>	Economic, Trade, Tariff and Safeguard Inquiries	39
<b>Chapter VI</b>	Procurement Review	51
<b>Chapter VII</b>	SIMA Amendments: Inquiries and Reviews	61
	Tribunal Publications	67

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# LIST OF TABLES

<b>Chapter I</b>	Tribunal's Caseload in Fiscal Year	4
<b>Chapter II</b>	Organization	8
	Legislative Mandate of the Tribunal	9
<b>Chapter III</b>	Findings Issued Under Section 43 of SIMA and Inquiries Under Section 42 of SIMA in Progress at Year End	22
	Orders Issued Under Section 76 of SIMA and Reviews in Progress at Year End	23
	SIMA Findings and Orders in Force as of March 31, 2000	24
	SIMA Cases Before the Federal Court of Canada or a Binational Panel	26
<b>Chapter IV</b>	Decisions on Appeals	29
	Appeal Decisions	35
	Tribunal Decisions Appealed to the Federal Court of Canada	37
	Appeal Decisions of the Federal Court of Canada	38
<b>Chapter V</b>	Disposition of Requests for Tariff Relief	45
	Disposition of Reviews of Tariff Relief Recommendations	46
	Tariff Relief Recommendations in Place	47
<b>Chapter VI</b>	Summary of Procurement Review Activities	52
	Disposition of Procurement Complaints	56
	Procurement Cases Before the Federal Court of Canada	59

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# CHAPTER I

## TRIBUNAL HIGHLIGHTS IN FISCAL YEAR

### Members

On July 5, 1999, Mr. Zdenek Kvarda began his term as Member of the Canadian International Trade Tribunal (the Tribunal). From 1986 to 1998, Mr. Kvarda was President and Chief Executive Officer of Aluminum Star Products Limited, one of Canada's finest manufacturers of architectural signage products. In 1991, he was presented with the Award of Merit for Outstanding Business Achievement by the Ontario Chamber of Commerce. Mr. Kvarda occupied various positions with the Eastern Ontario Development Corporation, including the position of Chair. As well as serving as Director of the Ontario Development Corporation, Mr. Kvarda was the founding President of the Belleville Junior Chamber of Commerce, the President and District President of the Ontario Junior Chamber of Commerce and Director of the Canadian Junior Chamber of Commerce.

On November 15, 1999, Mr. James Angus Ogilvy began his term as Member of the Tribunal. Prior to his appointment, Mr. Ogilvy was the Director, Internal Trade, with Alberta Intergovernmental and Aboriginal Affairs and also served as Alberta's Internal Trade Representative. Previously, he was the Director, Planning and Policy Development for the Alberta Liquor Control Board. Mr. Ogilvy was the Senior Editor, Humanities, of the *Canadian Encyclopedia*, as well as the Manuscript Editor of the *Dictionary of Canadian Biography*. He was also a lecturer at Bishop's University and Victoria College, University of Toronto.

On June 1, 1999, Mr. Arthur B. Trudeau began his term as temporary Member of the Tribunal. Until March 31, 1998, Mr. Trudeau was a Vice-Chair of the Tribunal. Prior to joining the federal government in 1971, he held managerial positions in accounting and finance with DuPont of Canada Ltd. He has held positions with the Department of Regional Economic Expansion and was the Secretary of the Anti-dumping Tribunal and of its successor, the Canadian Import Tribunal. In 1988, Mr. Trudeau was appointed to the position of Member of the Canadian Import Tribunal. He was a Member of the Tribunal starting in December 1988 and was appointed to the position of Vice-Chair on January 1, 1992.

During the fiscal year, the term of Ms. Anita Szlazak as Member of the Tribunal expired. The Tribunal would like to take this opportunity to recognize Ms. Szlazak's valuable contribution to the Tribunal's work.

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**Dumping and Subsidizing Inquiries and Reviews**

In the fiscal year, the Tribunal issued four findings following injury inquiries under section 42 of the *Special Import Measures Act* (SIMA) and seven orders following reviews under section 76. At the end of the year, there were two inquiries and five reviews in progress.

**Legislative Amendments to SIMA and the Canadian International Trade Tribunal Act**

Legislative amendments to SIMA and the *Canadian International Trade Tribunal Act* (CITT Act) will come into force on April 15, 2000. These amendments will bring changes to the jurisdiction, procedures and processes of the Tribunal.

In order to familiarize stakeholders with those changes, the Tribunal will issue a series of interim guidelines dealing with preliminary injury inquiries, public interest inquiries, interim reviews and expiry reviews. These documents will be available on the Tribunal's Web site ([www.citt.gc.ca](http://www.citt.gc.ca)). Chapter VII of this report describes how the Tribunal will conduct each of those proceedings under the new regime.

**Trade and Tariff Reference**

**Textiles**

During the fiscal year, the Tribunal issued six reports to the Minister of Finance concerning requests for tariff relief. In addition, the Tribunal's fifth annual status report on the investigation process was submitted to the Minister of Finance on January 27, 2000.

**Appeals**

The Tribunal issued decisions on 64 appeals from decisions of the Department of National Revenue (Revenue Canada) (now the Canada Customs and Revenue Agency [CCRA]) made under the *Customs Act* and the *Excise Tax Act*. On November 1, 1999, the CCRA was established to carry out the mandate of Revenue Canada.

**Procurement Review**

The Tribunal received 53 complaints during the fiscal year. The Tribunal issued 26 written determinations of its findings and recommendations. Eleven of these determinations related to cases that were in progress at the end of fiscal year 1998-99. In 14 of the 26 written determinations, the complaints were determined to be valid or valid in part.

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**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 provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as other information relating to the Tribunal's current activities. The Tribunal alerts subscribers of each new posting on its Web site. This service is available on request free of charge.

**Rules of  
Procedure**

The Tribunal has completed its review of the *Canadian International Trade Tribunal Rules* (Rules of Procedure). The purpose of the review was to eliminate unnecessary rules, to increase efficiency and transparency and to preserve fairness. Procedures have been modified to reflect technological changes. The review also allowed the Tribunal to incorporate new rules to accommodate legislative amendments to SIMA and the CITT Act that will come into effect on April 15, 2000. The revised Rules of Procedure will be published in the April 26, 2000, edition of the *Canada Gazette*, Part II, and will come into effect on April 15, 2000.

**Meeting Statutory  
Deadlines  
(Timeliness)**

All the Tribunal inquiries were completed on time, and decisions were issued within the statutory deadlines. For appeals of CCRA 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.

## Tribunal's Caseload in Fiscal Year

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 2000)
<b>SIMA ACTIVITIES</b>						
References (Advice)	-	3	3	3	-	-
Inquiries	3	4	7	4	1	2
Public Interest Requests	-	1	1	1	-	-
Requests for Review	-	-	-	-	-	-
Expiries <sup>1</sup>	-	9	9	6	3	-
Reviews	5	6	11	7	-	4
<b>APPEALS</b>						
<i>Customs Act</i>	159	67	226	59	54	113
<i>Excise Tax Act</i>	173	23	196	5	55	136
SIMA	<u>35</u>	<u>29</u>	<u>64</u>	<u>-</u>	<u>63</u>	<u>1</u>
<b>Total</b>	<b>367</b>	<b>119</b>	<b>486</b>	<b>64</b>	<b>172</b>	<b>250</b>
<b>ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES</b>						
<b>Textile Reference</b>						
Requests for Tariff Relief	15	8	23	8 <sup>2</sup>	10	5
Expiries <sup>1</sup>	1	-	1	1	-	-
Reviews	1	-	1	1	-	-
<b>Economic, Trade and Tariff-Related Matters</b>	-	-	-	-	-	-
<b>PROCUREMENT REVIEW ACTIVITIES</b>						
Complaints	15	53	68	27 <sup>3</sup>	32	9

1. As a result of a different method of reporting expiries, the first column refers to expiries for which decisions 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 6 reports to the Minister of Finance which related to 8 requests for tariff relief.
3. The Tribunal actually issued 26 written determinations which related to 27 procurement complaints.

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# 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, SIMA, the *Customs Act*, the *Excise Tax Act*, the *Canadian International Trade Tribunal Regulations* (CITT Regulations), the *Canadian International Trade Tribunal Procurement Inquiry Regulations* and the Tribunal's Rules of Procedure.

### 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 decisions of the CCRA 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* (AIT) and the World Trade Organization (WTO) *Agreement on Government Procurement* (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.

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**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 for the protection of confidential information. Only independent counsel who have filed declarations and confidentiality undertakings may have 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 U.S. and/or Mexican interests in SIMA. Governments that are members of the WTO may challenge some of the Tribunal's decisions before 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 8 in number, are supported by a permanent staff of 86 people. Its principal officers are the Secretary, responsible for corporate management, 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 inquiries, 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

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**Amendments to  
the Tribunal's  
Rules of  
Procedure**

the bar. The committee also includes representatives from the trade consulting community. The Tribunal consults 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. The Tribunal also briefs federal government departments and trade associations on its procedures.

Bill C-35, amending SIMA and the CITT Act, received Royal Assent on March 25, 1999, and will be proclaimed into force on April 15, 2000. The amendments to the Tribunal's Rules of Procedure flow from the amendments to SIMA and the CITT Act.

The changes to the Tribunal's Rules of Procedure deal primarily with five areas: (1) notice provisions; (2) exchange of information between the Tribunal and the CCRA; (3) procedures governing the conduct of interim and expiry reviews of orders and findings; (4) disclosure of confidential information to counsel and expert witnesses; and (5) public interest.

The amended Rules of Procedure maintain the basic framework, and the changes are intended to provide comprehensive and transparent guidance to those appearing before the Tribunal. Their aim is also to facilitate fair and efficient Tribunal proceedings. The changes include:

- the establishment of a process for the timely and comprehensive exchange of information between parties before a hearing by way of requests for information;
- the establishment of earlier filing deadlines for certain types of documents, such as subpoenas and expert witness reports;
- the possibility of filing and serving documents by electronic transmission;
- the possibility of using three types of hearings, that is, oral hearings, hearings by way of written submissions and electronic hearings; and
- the defining of procedures for a less formal application process for parties to obtain direction and rulings of the Tribunal on specific matters, such as the filing and communication of confidential information, late submissions, postponements and adjournments.

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**Organization**

**CHAIRMAN**

Pierre Gosselin

**VICE-CHAIRS**

Raynald Guay  
Patricia M. Close

**MEMBERS**

Anita Szlazak\*  
Peter F. Thalheimer  
Richard Lafontaine  
Zdenek Kvarda  
James A. Ogilvy  
Arthur B. Trudeau\*\*

**SECRETARIAT**

**Secretary**  
Michel P. Granger

**RESEARCH BRANCH**

**Executive Director of Research**  
Ronald W. Erdmann

**LEGAL SERVICES BRANCH**

**General Counsel**  
Gerry Stobo

\* Term expired during the fiscal year

\*\* Temporary Member



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## Legislative Mandate of the Tribunal

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Section	Authority
<b>CITT Act</b>	
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	Safeguard Measures
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts
<b>SIMA (Anti-dumping and Countervailing Duties)</b>	
33, 34, 35 and 37	Advice to Commissioner
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	Public Interest
61	Appeals of Re-determinations of the Commissioner 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 Commissioner 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

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## Legislative Mandate of the Tribunal (cont'd)

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Section	Authority
<b><i>Customs Act</i></b>	
67	Appeals of Decisions of the Commissioner Concerning Value for Duty and Origin and Classification of Imported Goods
68	Appeals to the Federal Court of Canada
70	References of the Commissioner Relating to the Tariff Classification or Value for Duty of Goods
<b><i>Excise Tax Act</i></b>	
81.19, 81.21, 81.22, 81.23, 81.25 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
<b><i>Softwood Lumber Products Export Charge Act</i></b>	
18	Appeals of Assessments and Determinations of the Minister of National Revenue
<b><i>Energy Administration Act</i></b>	
13	Declarations Concerning the Amount of Oil Export Charge

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# CHAPTER III

## DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

### The Process

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

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

The determination of dumping and subsidizing is the responsibility of the CCRA. 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 Commissioner of the CCRA. The Commissioner 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 Commissioner issues a preliminary determination of dumping. The CCRA levies provisional duties on imports from the date of the preliminary determination of dumping.

### 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 domestic manufacturers, importers and purchasers and to foreign producers. 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

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injury to a 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. 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 exporters challenge the domestic producers' case. After cross-examination by parties and 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 Commissioner. 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 the CCRA.

**Advice Given  
Under Section 37  
of SIMA**

When the Commissioner decides not to initiate a dumping or subsidizing investigation because there is no reasonable indication of injury, the Commissioner 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 Commissioner 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 Commissioner decides to initiate an investigation, a similar recourse is available to the Commissioner or any person or government under section 34 of SIMA. The same recourse is available under section 35 of SIMA, if the Commissioner terminates an investigation because of insufficient evidence of injury.

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**Inquiries  
Completed in the  
Fiscal Year**

***Certain Stainless  
Steel Round Bar***

*NQ-98-003*

*Finding:  
Injury  
(June 18, 1999)*

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 Commissioner when the decision regarding initiation was reached.

The Tribunal issued three advices during the fiscal year. They concerned *Certain Iodinated Contrast Media* (Reference No. RE-99-001), *Certain Hot-rolled Carbon Steel Plate* (Reference No. RE-99-002) and *Certain Household Appliances* (Reference No. RE-99-003). In each of the three cases, the Tribunal concluded that the evidence before the Commissioner disclosed a reasonable indication that the dumping had caused material injury or was threatening to cause material injury to a domestic industry. The first two cases subsequently proceeded to inquiries under section 42 of SIMA before the end of the fiscal year.

The Tribunal completed four inquiries under section 42 of SIMA in the fiscal year. They concerned *Certain Stainless Steel Round Bar* (Inquiry No. NQ-98-003), *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (Inquiry No. NQ-98-004), *Certain Cold-rolled Steel Sheet Products* (Inquiry No. NQ-99-001) and *Certain Concrete Reinforcing Bar* (Inquiry No. NQ-99-002). In 1998, the Canadian markets for these products were estimated to be approximately \$30 million, \$2.8 billion, \$1.1 billion and \$290 million respectively. On April 14, 1999, following the acceptance of an undertaking by the Deputy Minister of National Revenue (the Deputy Minister), the Tribunal suspended its inquiry in *Certain Filter Tipped Cigarette Tubes* (Inquiry No. NQ-98-002).

This inquiry involved dumped imports from the Republic of Korea (Korea). The sole domestic producer was Atlas Specialty Steels, A Division of Atlas Steels Inc. (Atlas).

This was the second inquiry during a 12-month period concerning the dumping of stainless steel round bar. In Inquiry No. NQ-98-001, the Tribunal made a finding of material injury respecting stainless steel round bar originating in or exported from the Federal Republic of Germany (Germany), France, India, Italy, Japan, Spain, Sweden, Taiwan and the United Kingdom. In its statement of reasons, the Tribunal advised the Deputy Minister, under section 46 of SIMA, that, based on the evidence before it, certain stainless steel round bar originating in or exported from Korea was being dumped in the Canadian market and that the dumping was threatening to cause injury to the domestic industry. Subsequent to this advice, on November 16, 1998, Atlas filed a dumping complaint with the Deputy Minister respecting certain stainless steel round bar from Korea, and the Deputy Minister initiated an investigation.

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***Certain Flat Hot-rolled  
Carbon and Alloy  
Steel Sheet Products***

*NQ-98-004*

*Finding:  
Injury  
(July 2, 1999)*

In the previous case, dumping from the nine named countries had caused Atlas to lose sales and market share and had forced it to lower prices, which led to reduced revenues and lost profits. In the current case, Atlas had benefited from the injury finding against the nine named countries, as it was able to increase its sales volume and market share. However, it continued to face competition from low price offerings from Korea and other countries. Consequently, Atlas was forced to continue discounting its prices and suffered injury in the form of price erosion. In addition, Atlas was unsuccessful in its attempt to increase prices in order to recover some of the losses that it had incurred earlier. The Tribunal, therefore, also found injury in the form of price suppression. After consideration of all relevant factors, the Tribunal was satisfied from the evidence that Korean imports materially injured the domestic industry.

This inquiry involved dumped imports from France, Romania, the Russian Federation and the Slovak Republic. There were five Canadian producers of hot-rolled steel sheet: Stelco Inc. (Stelco) of Hamilton, Ontario; Dofasco Inc. (Dofasco) of Hamilton; Algoma Steel Inc. (Algoma) of Sault Ste. Marie, Ontario; IPSCO Inc. of Regina, Saskatchewan; and Ispat Sidbec Inc. (Ispat) of Montréal, Quebec. Several importers and end users, as well as exporters from France, Romania and the Russian Federation, participated in the inquiry.

The full impact of the substantial quantities of dumped imports on prices in the market became apparent in the fourth quarter of 1998 and in the first quarter of 1999, as the domestic industry's production capacity utilization declined. In the third quarter of 1998, with the beginning of the General Motors strike and the continuing softness of the oil country tubular goods market and certain other industries, the domestic industry began discounting the price of like goods. It continued to do so through the first quarter of 1999 to meet the dumped import competition. Domestic producers experienced serious price declines, particularly in the pipe and tube and service centre sectors, which resulted in a major decline in the overall price level of hot-rolled steel sheet. These lower prices resulted in a significant negative impact on the revenues and profitability of the domestic producers of hot-rolled steel sheet, especially in the latter part of 1998 and in the first quarter of 1999.

Although the Tribunal found that the domestic producers of hot-rolled steel sheet experienced a significant loss of market share, it was of the opinion that the loss of market share was, in part, the result of supply constraints in 1997 and the first two quarters of 1998 and the result of the domestic industry's unwillingness to meet the low prices of dumped imports.

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***Certain Cold-rolled  
Steel Sheet Products***

*NQ-99-001*

*Finding:  
No injury and threat of  
injury  
(August 27, 1999)*

The Tribunal concluded that the material injury suffered by the domestic industry in the form of price erosion was caused primarily by the low prices at which dumped imports were being sold in the Canadian market.

The Tribunal excluded from its finding certain hot-rolled cut-to-length manganese alloy steel sheet products.

This inquiry involved dumped imports from Argentina, Belgium, New Zealand, the Russian Federation, the Slovak Republic, Spain and the Republic of Turkey (Turkey). The domestic industry consisted of the four Canadian producers of cold-rolled steel sheet products: Dofasco, Stelco, Ispat and Algoma. Several importers and end users, as well as exporters from the subject countries, participated in the inquiry.

The Tribunal found that the volumes of dumped goods from New Zealand and Spain were negligible. In a separate injury analysis, the Tribunal found that these imports had not caused and did not threaten to cause material injury to the domestic industry.

The Tribunal made a cumulative analysis of the effects on the domestic industry of dumped imports from Argentina, Belgium, the Russian Federation, the Slovak Republic and Turkey. It concluded that there was material injury to the domestic industry in 1998, since there was a loss of sales volume, price erosion and price suppression, with a reduction of almost one third in the industry's net income before taxes for cold-rolled steel sheet products between 1997 and 1998. However, in the Tribunal's view, there were many causes of the material injury in 1998. These included a contraction in the domestic market of 5 percent, an oversupply of cold-rolled steel sheet in the global market, a decline in world cold-rolled steel spot prices, an increase in the cost of goods manufactured by two of the domestic producers, the General Motors strike in the third quarter of 1998, production problems experienced by two of the domestic producers, a surge of non-subject Korean imports in 1998, and a significant volume of sales of dumped goods from the cumulated countries at service centres. The Tribunal did not find a sufficient causal link between the dumped imports and changes in the domestic industry's prices or its lost sales.

However, the Tribunal found that, in the absence of an injury finding, imports from these countries would threaten to cause material injury to the domestic industry. In reaching this conclusion, the Tribunal took into account the growth in imports from 1996 to 1998, low capacity utilization rates, the importance of exports as a way of maintaining capacity utilization, trade measures in place in other countries against Russian cold-rolled steel sheet and against Russian and Slovak hot-rolled steel sheet products in Canada, and the falling prices of the

**Certain Concrete  
Reinforcing Bar**

NQ-99-002

*Finding:  
Injury  
(January 12, 2000)*

Belgian, Russian, Slovak and Turkish goods. In reaching this conclusion, the Tribunal found that factors other than dumping would not cause material injury in the near future. The Tribunal found that sales from imports from Korea in the first quarter of 1999 were only a small percentage of its sales volume in the fourth quarter of 1998, suggesting a withdrawal of Korea from the Canadian market. With respect to the other factors that had been affecting the domestic industry in 1998, the Tribunal considered that they had run their course and would not be continuing influences on domestic producers.

The Tribunal excluded Argentina from its finding of threat of material injury, concluding that the expected volume of imports would not threaten domestic prices in the near future.

This inquiry concerned dumped imports of certain concrete reinforcing bar from the Republic of Cuba (Cuba), Korea and Turkey. The domestic industry consisted of eight Canadian producers of rebar: Co-Steel Inc. of Toronto, Ontario; Ispat; Stelco; AltaSteel of Edmonton, Alberta; Stelco McMaster Ltée. of Contrecoeur, Quebec; Gerdau Courtice Steel Inc. of Cambridge, Ontario; Gerdau MRM Steel Inc. of Selkirk, Manitoba; and Slater Steel Inc. of North York, Ontario. Several exporters from the subject countries participated in the inquiry.

The Tribunal found that the domestic producers of rebar experienced a significant loss of market share. In addition, to combat the market share losses, they were forced to reduce selling prices, leading to reductions in revenue and profitability, especially in the latter part of 1998 and in the first half of 1999. The Tribunal found that the magnitude of the market share losses, the price declines and the resulting financial losses were such as to conclude that the domestic producers had been materially injured. The Tribunal concluded that the material injury suffered by the domestic industry was caused by the low prices at which large volumes of dumped imported rebar were being sold in the Canadian market. Furthermore, the lost sales and the price erosion accounted for a significant proportion of the decline in financial performance experienced by the domestic industry in the latter part of 1998 and in the first half of 1999.

The Tribunal also considered whether factors other than dumping caused any injury suffered by the domestic producers. These factors included decreased scrap steel prices, the ability of the domestic industry to supply the market, a switch to higher-margin products, recent developments in the world market for rebar, imports of rebar from non-subject countries, principally the United States, and the international competitiveness of Canadian producers of rebar. The Tribunal determined that none of these other factors individually or collectively satisfactorily explained the injury suffered by the domestic industry.



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**Inquiries in  
Progress at the  
End of the Fiscal  
Year**

There were two inquiries in progress at the end of the fiscal year: *Iodinated Contrast Media* (Inquiry No. NQ-99-003) and *Certain Carbon Steel Plate* (Inquiry No. NQ-99-004).

The inquiry on iodinated contrast media concerns dumped imports from the United States. The sole domestic producer is Mallinckrodt Medical, Inc., of Pointe-Claire, Quebec. Nycomed Canada Inc., Nycomed Amersham Canada Limited and Bracco Diagnostics Canada Inc. are parties to the inquiry.

The inquiry on certain carbon steel plate concerns dumped imports from the Federative Republic of Brazil (Brazil), Finland and the Ukraine and dumped and subsidized imports from India, Indonesia and Thailand. The domestic producers are Algoma, Stelco and IPSCO Inc. of Regina, Saskatchewan. The exporters that are parties to the inquiry are Azovstal Iron & Steel Works (Ukraine), Usinas Siderúrgicas de Minas Gerais S.A (Brazil), Companhia Siderúrgica Paulista (Brazil) and Steel Authority of India Limited (India).

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.

The Tribunal received one request for a public interest investigation during the fiscal year. On August 3, 1999, the Tribunal received a joint request from Atlas Tube Inc., Bolton Steel Tube Co. Ltd. and Thyssen Canada Limited for a public interest investigation to eliminate the anti-dumping duties on the subject goods originating in or exported from Romania and the Russian Federation as a result of the Tribunal's injury finding in *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (Inquiry No. NQ-98-004). On August 19 and 20, 1999, Stelco, Dofasco, Algoma, IPSCO and Ispat made submissions opposing a public interest investigation. The Tribunal received several other submissions opposing a public interest investigation. On September 20, 1999, in its consideration (Public Interest Investigation No. PB-99-001), the Tribunal found that the joint request

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## Importer Ruling

did not reflect a public interest which warranted further investigation. Accordingly, the Tribunal did not conduct a public interest investigation into the matter.

Under section 90 of SIMA, the Commissioner 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 Commissioner, the Tribunal may reconsider its original finding of material injury under section 91.

There were no requests for an importer ruling in the fiscal year.

## 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 Commissioner 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 the fiscal year.

## 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 the fiscal year, the Tribunal issued nine notices of expiry. The Tribunal decided that reviews were warranted in six cases and initiated reviews. In *Refill Paper* (Expiry No. LE-99-005), the Tribunal received a request for the initiation of a review, but decided that a review was not warranted. In *Photo Albums* (Expiry No. LE-99-006) and in *Caps, Lids and Jars* (Expiry No. LE-99-008), there were no requests for the initiation of reviews.

The purpose of a review is to determine whether 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's procedures in reviews are similar to those in inquiries.

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**Reviews  
Completed in the  
Fiscal Year**

Upon completion of a review, the Tribunal issues an order with reasons, rescinding or continuing 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.

In the fiscal year, the Tribunal completed seven reviews.

On April 21, 1999, the Tribunal rescinded its finding in *Synthetic Baler Twine* (Review No. RR-98-003) respecting dumped imports from the United States. The Tribunal reached this conclusion after determining that, in the absence of economic and financial information from the major domestic producer, it could not make a finding on the likelihood of material injury to a major proportion of domestic production.

On May 17, 1999, the Tribunal continued its finding in *Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate* (Review No. RR-98-004) respecting dumped imports from Italy, Korea, Spain and the Ukraine. Algoma, Stelco and IPSCO, domestic producers accounting for most of Canadian production, and several exporters from Korea, Spain and the Ukraine participated in the review.

On June 22, 1999, the Tribunal continued its finding in *12-gauge Shotshells* (Review No. RR-98-005) respecting dumped imports from the Czech Republic and the Republic of Hungary. The Société d'expansion commerciale Libec Inc., Sainte-Justine-de-Newton, Quebec, a domestic producer accounting for most of Canadian production, participated in the review.

On July 19, 1999, the Tribunal continued its finding in *Black Granite Memorials and Black Granite Slabs* (Review No. RR-98-006) respecting dumped and subsidized imports from India. The Canadian Granite Association, representing most domestic producers, an exporter and an importer, as well as the Government of India, participated in the review.

On July 28, 1999, in *Certain Corrosion-resistant Steel Sheet Products* (Review No. RR-98-007), the Tribunal rescinded its finding respecting dumped imports from Australia, France, New Zealand, Spain, Sweden and the United Kingdom and continued its finding, excluding certain corrosion resistant steel products for automotive use, respecting imports from the United States, Brazil, Germany, Japan and Korea. Three domestic producers, Dofasco, Stelco and Sorevco, two importers and several exporters from Brazil, France, Germany, Korea, Spain and the United States, as well as several Canadian automotive stampers, participated in the review.

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**Reviews in  
Progress at the  
End of the Fiscal  
Year**

On February 8, 2000, the Tribunal rescinded its finding in *Fresh, Whole, Delicious and Red Delicious Apples* (Review No. RR-99-001) respecting dumped imports from the United States. The Canadian Horticultural Council, representing domestic growers, the Northwest Horticultural Council, representing Washington State growers and exporters, and the Ontario Produce Marketing Association participated in the review.

On March 20, 2000, in *Subsidized Canned Ham and Canned Pork-based Luncheon Meat* (Review No. RR-99-002), the Tribunal continued its finding respecting subsidized imports of canned ham from Denmark and the Netherlands and rescinded its finding respecting subsidized imports of canned pork-based luncheon meat from the European Union. The Canadian Meat Council and Maple Leaf Consumer Foods, the sole Canadian producer of canned ham and the main Canadian producer of canned luncheon meat, and an importer participated in the review. The European Union also made submissions in the review.

Four reviews were in progress at the end of the fiscal year. They were reviews of the findings and orders in: (1) *Women's Boots and Women's Shoes* (Review No. RR-99-003) respecting dumped imports from the People's Republic of China (China); (2) *Carbon Steel Welded Pipe* (Review No. RR-99-004) respecting dumped imports from Korea; (3) *Whole Potatoes* (Review No. RR-99-005) respecting dumped imports from the United States; and (4) *Refined Sugar* (Review No. RR-99-006) respecting dumped imports from the United States, Denmark, Germany, the Netherlands and the United Kingdom and subsidized imports from the European Union.

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, 2000.

**Judicial or Panel  
Review of SIMA  
Decisions**

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 review in the fiscal year.

During the fiscal year, the Federal Court of Canada affirmed the Tribunal's findings in *Certain Stainless Steel Round Bar* (Inquiry No. NQ-98-001) and in *Certain Hot-rolled Carbon Steel Plate* (Review No. RR-97-006). At the end of the fiscal year, the Federal Court of Canada had not yet heard applications to review the Tribunal's orders in *Certain Cold-rolled Steel Sheet* (Review

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**WTO Dispute  
Resolution**

No. RR-97-007) and in *Certain Corrosion-resistant Steel Sheet Products* (Review No. RR-98-007).

During the fiscal year, binational panels affirmed on remand the Tribunal's finding (Mexico) in *Certain Hot-rolled Carbon Steel Plate* (Inquiry No. NQ-97-001) and its finding (United States) in *Certain Prepared Baby Foods* (Inquiry No. NQ-97-002). Also at the end of the fiscal year, binational panels had heard the applications to review but had not yet issued decisions regarding the Tribunal's 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).

Governments that are members of the WTO may challenge Tribunal injury findings or orders in dumping and countervailing cases before 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.

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## TABLE 1

### Findings Issued Under Section 43 of SIMA Between April 1, 1999, and March 31, 2000, and Inquiries Under Section 42 of SIMA in Progress at Year End

Inquiry No.	Product	Country	Date of Finding/Decision	Finding/Decision
NQ-98-002	Certain Filter Tipped Cigarette Tubes	France	April 14, 1999	Inquiry suspended
NQ-98-003	Certain Stainless Steel Round Bar	Korea	June 18, 1999	Injury
NQ-98-004	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	July 2, 1999	Injury
NQ-99-001	Certain Cold-rolled Steel Sheet Products	New Zealand, Spain and Argentina	August 27, 1999	No injury
		Belgium, Russian Federation, Slovak Republic and Turkey		Threat of injury
NQ-99-002	Certain Concrete Reinforcing Bar	Cuba, Korea and Turkey	January 12, 2000	Injury
NQ-99-003	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	In progress	
NQ-99-004	Certain Carbon Steel Plate	Brazil, Finland, India, Indonesia, Thailand and Ukraine	In progress	

## TABLE 2

### Orders Issued Under Section 76 of SIMA Between April 1, 1999, and March 31, 2000, and Reviews in Progress at Year End

Review No. or Expiry No.	Product	Country	Date of Order	Order
RR-98-003	Synthetic Baler Twine	United States	April 21, 1999	Finding rescinded
RR-98-004	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Korea, Spain and Ukraine	May 17, 1999	Finding continued
RR-98-005	12-gauge Shotshells	Czech Republic and Republic of Hungary	June 22, 1999	Finding continued
RR-98-006	Black Granite Memorials and Black Granite Slabs	India	July 19, 1999	Finding continued
RR-98-007	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan and Korea	July 28, 1999	Finding continued
		United States		Finding continued
		Australia, France, New Zealand, Spain, Sweden and United Kingdom		Finding rescinded
LE-99-005	Refill Paper	Brazil	November 16, 1999	Review not warranted
RR-99-001	Fresh, Whole, Delicious and Red Delicious Apples	United States	February 8, 2000	Finding rescinded
RR-99-002	Subsidized Canned Ham	Denmark and Netherlands	March 20, 2000	Order continued
	Canned Pork-based Luncheon Meat	European Union		Order rescinded
RR-99-003	Women's Boots and Women's Shoes	China	In progress	
RR-99-004	Carbon Steel Welded Pipe	Korea	In progress	
RR-99-005	Whole Potatoes	United States	In progress	
RR-99-006	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	In progress	

## TABLE 3

### SIMA Findings and Orders in Force as of March 31, 2000<sup>1</sup>

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-94-003	May 2, 1995	Women's Boots and Women's Shoes	China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
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-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	
RR-95-001	July 5, 1996	Oil and Gas Well Casing	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 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	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	
RR-97-001	October 20, 1997	Waterproof Rubber Footwear	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, China, Republic of South Africa and Russian Federation	

1. To determine the precise product coverage, refer to the findings or orders 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-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 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	Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	
RR-98-004	May 17, 1999	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Korea, Spain and Ukraine	NQ-93-004 (May 17, 1994)
RR-98-005	June 22, 1999	12-gauge Shotshells	Czech Republic and Republic of Hungary	NQ-93-005 (June 22, 1994)
RR-98-006	July 19, 1999	Black Granite Memorials and Black Granite Slabs	India	NQ-93-006 (July 20, 1994)
RR-98-007	July 28, 1999	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	NQ-93-007 (July 29, 1994)
NQ-98-003	June 18, 1999	Certain Stainless Steel Round Bar	Korea	
NQ-98-004	July 2, 1999	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	
NQ-99-001	August 27, 1999	Certain Cold-rolled Steel Sheet Products	Belgium, Russian Federation, Slovak Republic and Turkey	
NQ-99-002	January 12, 2000	Certain Concrete Reinforcing Bar	Cuba, Korea and Turkey	
RR-99-002	March 20, 2000	Subsidized Canned Ham	Denmark and Netherlands	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990) RR-94-002 (March 21, 1995)

## TABLE 4

### SIMA Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 1999, and March 31, 2000

Case No.	Product	Country of Origin	Forum	Date Filed	File No./ Status
NQ-97-001	Certain Hot-rolled Carbon Steel Plate	Mexico	BP	November 28, 1997	CDA-97-1904-02 Finding remanded in part Determination on remand affirmed
				July 12, 1999	CDA-MEX-99-1904-01
NQ-97-002	Certain Prepared Baby Foods	United States	BP	June 5, 1998	CDA-USA-98-1904-01 Decision affirmed
NQ-98-001	Certain Stainless Steel Round Bar	Germany, France, India, Italy, Japan, Spain, Sweden, Taiwan and United Kingdom	FC	October 2, 1998	A—591—98 Decision affirmed
NQ-98-004	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	FC	July 30, 1999	A—472—99 Appeal discontinued
RR-97-006	Certain Hot-rolled Carbon Steel Plate	Belgium, Brazil, Czech Republic, Denmark, Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	FC	June 4, 1998	A—365—98 Decision affirmed
RR-97-007	Certain Cold-rolled Steel Sheet	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
RR-98-007	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	FC	September 2, 1999	A—236—99

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

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# CHAPTER IV

## APPEALS

### Introduction

The Tribunal hears appeals from decisions of the Commissioner 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, Mexico and Chile 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.

The Tribunal strives to be informal and accessible. However, there are certain procedures and time constraints that are imposed by law and by the Tribunal. 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 a description of the goods in issue and an indication of the points at issue between the appellant and the Minister or Commissioner (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 the CCRA's position. The Secretary of the Tribunal then contacts both parties in order to schedule a hearing. Hearings are generally conducted before Tribunal members in public. Depending on the complexity and precedential nature of the matter at issue, appeals will be heard by a panel of one or three members. Persons may intervene in an appeal by specifying the nature of their interest in the appeal and by indicating the reason for intervening and how they may assist the Tribunal in the resolution of the appeal.

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## 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 Tribunal, on its own initiative or on the request of the appellant or the respondent, may decide to hold a hearing by way of written submissions. In that case, the Tribunal publishes a notice of the hearing in the *Canada Gazette* so that other interested persons can make their views known. In the notice, the Tribunal establishes the manner and timing for filing the submissions and the requirement, if appropriate, for the parties to file an agreed statement of facts.

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 locations across Canada or requiring parties from outside Ontario or Quebec to present themselves at the Tribunal's premises in Ottawa. 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**

During the fiscal year, the Tribunal heard 60 appeals of which 55 related to the *Customs Act* and 5 to the *Excise Tax Act*. Decisions were issued in 64 cases, of which 42 were heard during the fiscal year.

**Decisions on Appeals**

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	18	1	41	60
<i>Excise Tax Act</i>	-	-	4	4
SIMA	-	-	-	-

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

**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.

***Reha Enterprises and Cosmetic Import v. DMNR***

*AP-98-053 and AP-98-054*

*Decision: Appeals dismissed (October 28, 1999)*

These were appeals regarding classification from decisions of the Deputy Minister made under subsection 63(3) of the *Customs Act*. Prior to the hearing, the parties agreed that the goods in issue were not soap, but organic surface-active products and preparations. The appeals dealt with two products: Ombra and Fa. The Tribunal had to determine whether Ombra body wash, in various fragrances, was properly classified under tariff item No. 3305.10.00 as shampoo, as determined by the respondent, or should have been classified under tariff item No. 3401.11.90 as other organic surface-active products for toilet use or under tariff item No. 3401.20.90 as other liquid soap, as claimed by Reha Enterprises Ltd. It also had to determine whether Fa shower gel, in various fragrances, was properly classified under tariff item No. 3307.90.00 as other toilet preparations, as determined by the respondent, or, as argued by counsel for the respondent at the hearing, under tariff item No. 3307.30.00 as other bath preparations, or should have been classified under tariff item No. 3401.11.90 as other organic surface-active products for toilet use or under tariff item No. 3401.20.90 as other liquid soap, as claimed by Cosmetic Import Co. Limited. It also considered whether another heading would be more accurate, such as heading No. 34.02, organic surface-active agents (other than soap).

The Tribunal first considered whether the goods should be classified as a preparation for use on the hair, i.e. shampoo. It reviewed the products and the

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directions for use as a body wash, in conjunction with the common and ordinary meaning of the word “shampoo”. While the Tribunal accepted that the products may be a substitute for shampoo, the products were used most notably for washing the body. The Tribunal was not persuaded to classify the products as a preparation for the use on the hair or as shampoo in heading No. 33.05.

The Tribunal examined whether the products should be classified as organic surface-active products and preparations for toilet use or as other liquid soaps in heading No. 34.01. The wording to heading No. 34.01 expressly excludes organic surface-active products which are not in the form of bars, cakes, moulded pieces or shapes. The Tribunal was not persuaded to broaden the scope or coverage of heading No. 34.01 to include more forms than those expressly provided for in the words of that heading.

The Tribunal then had to consider whether the products should be classified in heading No. 33.07 as either bath preparations or toilet preparations. The Tribunal determined that heading No. 33.07 is intended to cover goods which play only a secondary role in the act of washing one’s body and, at best, the soaps or organic surface-active agents contemplated in this heading would have a passive role in cleaning the body and only because of their presence in the bath water. With respect to toilet preparations, the Tribunal looked at the interpretation of the phrase “toilet preparations” and was not persuaded that the products, described on their labels as preparations used for washing oneself, were properly covered by that expression. Therefore, the products were not classified in heading No. 33.07.

It was evident to the Tribunal that none of the headings adequately described the goods in issue. In view of the difficulties that the Tribunal encountered in attempting to classify the goods in issue according to the headings proposed by the parties, the Tribunal reviewed other headings. It found authority in subsection 67(3) of the *Customs Act*, which directs it to “make such order, finding or declaration as the nature of the matter may require”. The Tribunal considered that this subsection allowed it to classify a product without accepting either party’s choice, in cases where it is appropriate to do so; in other words, to arrive at what it considers to be the correct classification. This was consistent with the Tribunal’s reasons in earlier decisions: *Research Products/Blankenship of Canada v. DMNR* and *Rigel Shipping Canada v. DMNR*. While this happens only occasionally, it is an important tool available to the Tribunal to ensure that the correct classification, based on the evidence, is given to a product.

In addition to the classification options proposed by the parties, the Tribunal also considered the applicability of heading No. 34.02 as it read before the February 1998 changes. The Tribunal was of the view that heading No. 34.02 was

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**Asea Brown Boveri v.  
DMNR**  
  
AP-97-137  
  
*Decision:*  
*Appeal dismissed*  
*(December 21, 1999)*

a reasonable alternative to consider, as the ones proposed by the parties had significant obstacles to the classification of the goods in issue. On the face of it, both Ombra and Fa could fall in this heading. Heading No. 34.02 does not limit the goods in issue as do heading Nos. 34.01 (organic surface-active products in the form of bars, cakes, moulded pieces or shapes), 33.05 (shampoos) and 33.07 (bath and toilet preparations). Therefore, the Tribunal was of the view that it was not unreasonable to consider heading No. 34.02 as one that might accommodate the classification of the products at the time of their importation.

The Tribunal agreed that it had to consider the *Customs Tariff* as it existed on the date of importation of the goods in issue. However, it was of the view that it would be irresponsible to ignore the relevant amendments to the *Explanatory Notes to the Harmonized Commodity Description and Coding System* which help to confirm or clarify the classification of an imported product. This is particularly so where the classification of imports is very difficult, if not impossible, taking into account the heading, the *Explanatory Notes*, etc. as they were at the time of importation. The Tribunal was of the view that the 1998 amendments confirmed the appropriateness of classifying the goods in issue in subheading No. 3402.20 as surface-active preparations put up for retail sale.

This was an appeal from a decision of the Deputy Minister made under section 63 of the *Customs Act*. There were two issues: (1) whether the respondent's decision under appeal was made in accordance with section 63 or 64 and, therefore, whether the Tribunal had jurisdiction to hear the appeal; and (2) whether the goods in issue qualified for duty relief under Code 2101 as articles for use in the goods of tariff item No. 9032.89.20 as process control apparatus, excluding sensors, which converts analog signals from or to digital signals.

The Tribunal derives its jurisdiction from section 67 of the *Customs Act* which, at the relevant time, stated that the Tribunal could hear appeals of the respondent's decisions made pursuant to section 63 or 64. If the decision or any aspect of it before the Tribunal was not one made pursuant to section 63 or 64, then the Tribunal was of the opinion that it had no jurisdiction to hear an appeal from that decision or any aspect of it. In this case, six different types of goods were imported under one customs invoice. The classification of the goods was deemed to have been made 30 days after the time the goods were accounted for pursuant to subsection 58(5). The appellant requested a re-determination pursuant to paragraph 63(1)(a) in respect of two of the goods in issue – the resistors and the capacitors. However, the respondent re-determined the tariff classification of all the goods.

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In the Tribunal's view, the only question properly before it was whether the resistors and capacitors qualified for duty relief under Code 2101. It held that, as the respondent re-determined the classification of the resistors and capacitors as a result of the appellant's request for re-determination pursuant to paragraph 63(1)(a) of the *Customs Act*, a decision was made by the respondent pursuant to section 63. Therefore, the appeal on the classification of the resistors and capacitors was properly before the Tribunal. However, the Tribunal found that the respondent's re-determination of the classification of the four other types of goods was not a re-determination resulting from a request for re-determination by the appellant pursuant to section 63 nor was it a re-determination made pursuant to section 64. As there was no decision by the respondent on these four other types of goods, the Tribunal was not seized of the matter. The Tribunal also found that it could not declare the respondent's decision in respect of those four other goods a nullity. Its jurisdiction is set out in section 67 and, without a decision of the respondent made under section 63 or 64 in respect of those four goods, the Tribunal had no jurisdiction to make a pronouncement in relation to their classification. The *Customs Act* does not give the Tribunal the jurisdiction to judicially review a decision of the respondent. That is a matter for the Federal Court of Canada.

Once the jurisdictional issue decided, the Tribunal had to determine whether the resistors and capacitors qualified for duty relief under Code 2101. Code 2101 applies to articles for use in the goods in tariff item No. 9032.89.20, which covers process control apparatus, excluding sensors, which converts analog signals from or to digital signals. The Tribunal had to determine whether the resistors and capacitors were "for use in" a process control apparatus of tariff item No. 9032.89.20. The Tribunal examined the expression "for use in" found at section 4 of the *Customs Tariff* as it was at the time of importation of the goods in issue. The expression includes "attached to", and the Tribunal adopted that term as it was used in *Sony of Canada v. DMNR*, whereby goods are attached to other goods if they are "physically connected and are functionally joined" to the latter. Before deciding whether the goods in issue were physically connected and functionally joined to process control apparatus, the Tribunal examined what constituted process control apparatus of tariff item No. 9032.89.20. The Tribunal was of the view that "process control" included the functioning of devices that collectively monitor the system, interpret the data received and take action to restore the system to pre-set values. Therefore, devices that participate in control or management decisions engage in process control. In addition, devices that participate in certain protective decisions can also be engaging in process control. The Tribunal was of the view that the control of a single element of the process, or an aspect of a single element of the process, may constitute process control. The evidence before the Tribunal was that the functional unit, composed of the voltage and current transformers, control relays and circuit breakers, monitors the



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transmission of electricity to ensure that the voltage and other variables are at appropriate settings. The evidence also showed that the control relays interpret the data received from the voltage and current transformers and send a signal to other equipment, such as circuit breakers or switchgear, to direct that equipment to take action to restore the system to pre-set values. The Tribunal found that the functional unit, composed of the voltage and current transformers, control relays and circuit breakers, participates in management and control decisions and is process control apparatus under tariff item No. 9032.89.20. The Tribunal was of the view that, although the resistors and capacitors were physically connected to the control relays and circuit breakers, they were not functionally joined to the process control apparatus and were passive devices. As they did not have an active role in carrying out directions from the process control apparatus, they were not functionally joined to the process control apparatus. Therefore, the resistors and capacitors did not qualify for duty relief under Code 2101 as goods for use in process control apparatus of tariff item No. 9032.89.20. The appeal was dismissed.

***Regal Confections v.  
DMNR***

*AP-98-043, AP-98-044  
and AP-98-051*

*Decision:  
AP-98-043 and  
AP-98-051, dismissed  
AP-98-044, allowed  
(June 25, 1999)*

These were three appeals regarding the tariff classification of the following products: candy-filled baby bottles labelled “Dino•Rocks” (Baby Bottles) in Appeal No. AP-98-043; blister cards containing a motorized candy dispenser and two packages of PEZ candy (Power PEZ) in Appeal No. AP-98-044; and clear plastic toy banks in the shape of a duck (Duck Banks) in Appeal No. AP-98-051. Appeal Nos. AP-98-043 and AP-98-044 raised the issue of whether the Baby Bottles and Power PEZ were properly classified under tariff item No. 1704.90.90 as other sugar confectionery not containing cocoa, as determined by the respondent, or should have been classified as other toys, reduced-size (“scale”) models and similar recreational models under tariff item No. 9503.90.00 for the Baby Bottles, and as other toys, other than of metal, incorporating a motor under tariff item No. 9503.80.90 for the Power PEZ, as claimed by the appellant. Appeal No. AP-98-051 raised the issue of whether the Duck Banks were properly classified under tariff item No. 3923.90.90 as other plastic containers, as determined by the respondent, or should have been classified under tariff item No. 9503.90.00 as other toys, as claimed by the appellant.

Regarding the Baby Bottles, unable to classify the goods according to Rule 1 of the *General Rules for the Interpretation of the Harmonized System* (the General Rules), the Tribunal moved to Rule 3 (b), as these goods consisted of more than one product. The Tribunal had to determine the essential character of the goods as either toys in heading No. 95.03 or candy in heading No. 17.04. On balance, the evidence that the Baby Bottles were, first and foremost, toys was not convincing, rather the bottles provided novelty packaging that contributed to the marketing of the candy. These goods were properly classified under tariff item No. 1704.90.90 as other sugar confectionery not containing cocoa.

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With respect to the Power PEZ, these goods again could not be classified solely on the basis of Rule 1 of the General Rules. The Tribunal was directed to Rule 3 (b), given that the blister card contains the motorized candy dispenser, which could be classified as a toy, and the two packages of candy, which could be classified as confectionery. It was the Tribunal's opinion that, for purposes of classification, novelty packaging was not usually determinative; however, in the case of the Power PEZ, the novelty was so extensive that it actually transformed the essential character of the product. The play value of the Power PEZ predominates over the candy. It is designed for play prior to the candy being eaten and even prior to the package being opened. Furthermore, the play value is also durable, as evidenced by the fact that the Power PEZ dispenser has a replaceable battery and is a collectible. The Tribunal, therefore, agreed with the appellant, given the fact that the play value of the Power PEZ not only endures but also precedes any eating of the candy. As a result, the Power PEZ should be classified as other toys, other than of metal, incorporating a motor under tariff item No. 9503.80.90.

Regarding the Duck Banks, the Tribunal was of the view, based on Rule 1 of the General Rules, that these goods were properly classified under tariff item No. 3923.90.90. Although their many features made them appealing, the Duck Banks were plastic containers, not toys, at the time of importation. They were used by the appellant as containers to sell all kinds of candy. Their secondary use, as premium products for the retailer, was irrelevant for the purpose of tariff classification. What retailers did with the Duck Banks when they were empty, whether they put something else in them or sold them as toys, was merely circumstantial and had no bearing on the tariff classification of these goods. The appeals with respect to the Baby Bottles and the Duck Banks were dismissed. The appeal with respect to the Power Pez was allowed.

## TABLE 1

### Appeal Decisions Rendered Under Section 67 of the *Customs Act* and Section 81.19 of the *Excise Tax Act* Between April 1, 1999, and March 31, 2000

Appeal No.	Appellant	Date of Decision	Decision
<b>Customs Act</b>			
AP-95-128	Nowasco Well Service Ltd.	May 18, 1999	Dismissed
AP-97-069	Italfina Inc.	May 31, 1999	Dismissed
AP-98-061	Xerox Canada Ltd./The Document Company	June 10, 1999	Dismissed
AP-98-056	Thérèse Abranches	June 14, 1999	Dismissed
AP-98-043, AP-98-044 and AP-98-051	Regal Confections Inc.	June 25, 1999	AP-98-043 and AP-98-051, dismissed AP-98-044, allowed
AP-97-139 and AP-98-042	Bureau de relations d'affaires internationales inc. (Busrel inc.)	August 24, 1999	AP-97-139, allowed AP-98-042, dismissed
AP-98-076	International Imports for Competitive Shooting Equipment Inc.	August 26, 1999	Dismissed
AP-95-225 and AP-95-227	Diamant Boart Truco Ltd.	September 3, 1999	Dismissed
AP-92-298, AP-92-348, AP-92-380, AP-93-038, AP-93-121, AP-95-144 and AP-95-221	Mueller Canada Inc.	September 23, 1999	Dismissed
AP-98-085	Utex Corporation	October 27, 1999	Dismissed
AP-98-053 and AP-98-054	Reha Enterprises Ltd. and Cosmetic Import Co. Limited	October 28, 1999	Dismissed
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 and AP-97-136	AYP (Canada) Inc.	November 5, 1999	Dismissed
AP-97-074	C.L. Blue Systems Ltd.	November 24, 1999	Dismissed
AP-98-100	Brunswick International (Canada) Limited	December 14, 1999	Allowed in part
AP-98-078	Classic Chef Corp.	December 17, 1999	Dismissed
AP-98-067	The Stevens Company Limited	December 20, 1999	Allowed
AP-97-123	Asea Brown Boveri Inc.	December 21, 1999	Allowed
AP-97-137	Asea Brown Boveri Inc.	December 21, 1999	Dismissed
AP-98-106	Atlas Graphic Supply Inc.	January 12, 2000	Dismissed
AP-98-108	Naturin Canada	January 14, 2000	Allowed
AP-98-058 and AP-98-02	Motovan Motosport Inc. and Steen Hansen Motorcycles Ltd.	January 21, 2000	Dismissed

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## Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-99-055	Multidick Incorporated	February 3, 2000	Dismissed
AP-94-101	Khong Island Jeweller Ltd.	February 11, 2000	Dismissed
AP-98-047	N.C. Cameron & Sons, Limited	February 11, 2000	Dismissed
AP-97-124 and AP-97-125	Asea Brown Boveri Inc.	February 21, 2000	Dismissed
AP-98-001	Asea Brown Boveri Inc.	February 21, 2000	Allowed
AP-99-037	Coloridé Inc.	February 25, 2000	Allowed
AP-99-015 to AP-99-025	Convoy Supply Ltd.	February 28, 2000	Allowed
<b><i>Excise Tax Act</i></b>			
AP-95-139	Advance Building Products Ltd.	September 29, 1999	Dismissed
AP-92-222	Les Huiles Idéal Inc.	October 4, 1999	Dismissed
AP-92-238	Driscoll's Darts & Trophies Ltd.	January 27, 2000	Dismissed
AP-93-049	Raymonde Plourde	February 11, 2000	Dismissed

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## TABLE 2

### Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 1999, and March 31, 2000, and Pending as of March 31, 2000<sup>1</sup>

Appeal No.	Appellant/Product	Federal Court No.
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 and AP-97-136	AYP (Canada) Inc.	A—57—00
AP-97-137	Asea Brown Boveri Inc.	T—80—00 A—171—00 T—582—00
AP-98-007 and AP-98-010	Richards Packaging Inc. and Duopac Packaging Inc.	A—262—99
AP-98-055	Butteroil Blends	A—396—99
AP-98-061	Xerox Canada Ltd./The Document Company	A—535—99
AP-98-085	Utex Corporation	A—28—00

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, 1999, and March 31, 2000.

## TABLE 3

### Appeal Decisions of the Federal Court of Canada Rendered Between April 1, 1999, and March 31, 2000<sup>1</sup>

Appeal No.	Appellant	Federal Court No.	Outcome	Date
AP-92-128	Park City Products Limited	T—77—94	Appeal dismissed	September 15, 1999
AP-92-335	Mercedes-Benz Canada Inc.	T—1365—94	Appeal discontinued	April 26, 1999
AP-93-333	Michelin Tires (Canada) Ltd.	T—1525—95	Appeal dismissed	March 28, 2000
AP-94-022	Ventes J.V.F. Inc.	T—1551—95	Appeal dismissed	July 6, 1999
AP-94-265	Super Générateur Inc.	T—1585—96	Appeal dismissed	August 10, 1999
AP-95-090 and AP-95-166	Toyota Canada Inc.	A—878—96	Appeals allowed	June 28, 1999
AP-95-128	Nowasco Well Service Ltd.	A—506—99	Appeal allowed in part	November 10, 1999
AP-95-258	Specialized Bicycle Components Canada, Inc.	A—45—97	Appeal dismissed	January 17, 2000
AP-95-259	Paccar of Canada Ltd.	A—354—98	Appeal dismissed	January 20, 2000
AP-96-082	Rollins Machinery Ltd.	A—3—98	Appeal allowed	September 15, 1999
AP-96-105	Armstrong Bros. Tool Co.	A—818—97	Appeal dismissed	June 22, 1999
AP-96-114	Tootsie Roll of Canada Limited	A—848—97	Appeal dismissed	June 22, 1999
AP-96-127	KanEng Industries Inc.	A—44—98	Appeal discontinued	April 6, 1999
AP-96-211, AP-96-212, AP-96-216, AP-96-223, AP-96-237 to AP-96-239, AP-97-001, AP-97-004 to AP-97-008 and AP-97-024 to AP-97-026	2703319 Canada Inc. O/A VVV Enterprises, 168700 Canada Inc. O/A Sacha London, Aldo Shoes (1993) Inc., Transit (A Division of Aldo Shoes) and Globo (A Division of Aldo Shoes)	A—155—98	Appeal dismissed	November 25, 1999
AP-96-241	C.A.S. Sports International Inc. and Atomic Ski Canada Inc.	A—108—98	Appeal discontinued	March 22, 1999
AP-97-036	Spalding Canada Inc.	A—123—98	Appeal dismissed	April 23, 1999
AP-97-078	Jonic International Incorporated	A—765—98	Appeal discontinued	July 30, 1999
AP-97-082	Cooper Industries (Canada) Inc.	A—702—98	Appeal discontinued	March 23, 1999
AP-97-104	Transilwrap of Canada Ltd.	A—337—99	Appeal discontinued	August 18, 1999
AP-98-006	Burlodge Canada Ltd.	A—200—99	Appeal discontinued	June 2, 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, 1999, and March 31, 2000.

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# 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.

### Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, on November 26, 1997, and on August 19, 1999, 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 on 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, 2002, 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

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	<p>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.</p>
<p><b>Process</b></p>	<p>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 the CCRA 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.</p>
<p><b>Filing and Notification of a Request</b></p>	<p>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.</p> <p>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.</p>
<p><b>Investigations</b></p>	<p>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 the Department of Foreign Affairs and International Trade, the Department of Industry, the Department of Finance and the CCRA. The notice is also published in the <i>Canada Gazette</i>.</p> <p>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.</p>



To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits and 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 for the conduct of the Tribunal's investigation 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. Only independent counsel who have filed declarations and confidentiality undertakings may have access to such confidential information.

**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

	<p>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.</p>
	<p>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 continue to apply and whether extending tariff relief under such conditions would continue to provide net economic benefits for Canada.</p>
<p><b>Annual Status Report</b></p>	<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 January 27, 2000, with its fifth annual status report on the investigation process. The status report covered the period from October 1, 1998, to September 30, 1999.</p>
<p><b>Recommendations Submitted During the Fiscal Year</b></p>	<p>During the fiscal year, the Tribunal issued 6 reports to the Minister of Finance which related to 8 requests for tariff relief. In addition, the Tribunal issued one report further to a review of recommendations that were previously issued. At year end, 5 requests were outstanding, of which investigations had been commenced in respect of 4 requests. Table 1 at the end of this chapter summarizes these activities.</p>
<p><b>Recommendations in Place</b></p>	<p>By the end of the fiscal year, the Government had implemented 73 recommendations by the Tribunal, of which 66 are still subject to tariff relief orders. Table 3 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 the fiscal year, these tariff items covered imports worth \$160 million (estimated) and provided tariff relief worth \$21 million (estimated), the latter representing a decrease of 16 percent over 1998-99.</p>

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A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.

**Certain Ring-spun Yarns**

TA-98-004

*Recommendation:  
Tariff relief to be continued for an additional period of three years (June 18, 1999)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of certain ring-spun yarns be continued beyond June 30, 1999, for an additional period of three years. In its report, the Tribunal noted that there was a broad consensus in the textile spinning and knitting industries that, as a minimum, the tariff relief for certain ring-spun yarns should be continued for an additional period of three years. The Tribunal indicated that tariff relief had provided domestic users of these yarns with benefits that were worth millions of dollars each year. The Tribunal also noted that it did not receive any evidence that could allow it to conclude that the factors that led it to recommend that tariff relief be granted had significantly changed since it issued its original recommendations in 1995 and 1996. The Tribunal concluded that, in the absence of such evidence, extending tariff relief should continue to provide net economic gains for Canada.

**Tribal Sportswear Inc.**

TR-98-019

*Recommendation:  
Indeterminate tariff relief (August 24, 1999)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of woven fabrics of cotton, 3-thread twill, containing 98 percent by weight of cotton and 2 percent by weight of elastomeric strip, dyed, weighing more than 200 g/m<sup>2</sup>, of subheading No. 5209.32, for use in the manufacture of women's pants, skirts and shorts, be granted for an indeterminate period of time. In its report, the Tribunal noted that it did not view the cotton and cotton/polyester fabrics produced by the domestic industry as being substitutable for the fabrics for which tariff relief was requested. With regard to the domestic cotton/spandex fabric that was being developed, the Tribunal noted that market acceptance and the industry's ability to supply had not, at that time, been demonstrated. Accordingly, the Tribunal could not attribute any costs that might be incurred by the domestic industry to the assessment of the net economic gains for Canada from the requested tariff relief. The Tribunal concluded that tariff relief would provide a yearly benefit to Tribal Sportswear Inc. and other users of the subject fabrics estimated at more than \$200,000.

**Ballin Inc.**

TR-97-012

*Recommendation:  
Indeterminate tariff relief (October 27, 1999)*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of: (1) woven fabrics, of yarns of different colours, of polyester filaments mixed solely with polynosic rayon staple fibres, the 2-ply warp yarns and the single weft yarns measuring not less than 190 decitex but not more than 250 decitex per single yarn, the staple fibres measuring not more than 2.4 decitex per single staple fibre, of a weight exceeding 170 g/m<sup>2</sup>, of subheading No. 5407.93; and (2) woven fabrics, of yarns of different colours, of polynosic rayon staples fibres, mixed mainly with polyester filaments or polyester staple

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fibres, measuring not less than 85 decitex but not more than 250 decitex per single yarn, the staple fibres measuring not more than 3.4 decitex per single staple fibre, weighing at least 120 g/m<sup>2</sup> but not more than 210 g/m<sup>2</sup>, of subheading No. 5516.23, both for use in the manufacture of men's trousers and shorts, be granted for an indeterminate period of time.

The Tribunal was of the view that the polyester/rayon fabrics and the fabrics made from Tencel or Tencel blends produced by the domestic industry were not substitutable for the fabrics for which tariff relief was requested. With regard to the Micro-Diamond fabric that was under development, the Tribunal did not attribute any costs that might be incurred by the domestic industry to the assessment of the net economic gains for Canada from the requested tariff relief because the said fabric was not directly substitutable. The Tribunal concluded that, considering that tariff relief would provide yearly benefits to Ballin Inc. and other users of the subject fabrics in excess of \$500,000, granting the tariff relief requested would result in net economic benefits for Canada.

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## TABLE 1

### Disposition of Requests for Tariff Relief Between April 1, 1999, and March 31, 2000

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-97-012	Ballin Inc.	Fabric	October 27, 1999	Indeterminate tariff relief
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	April 14, 1999	Indeterminate tariff relief
TR-98-008	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-009	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-010	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-011	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-012	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-013	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-014	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-015	Zenobia Collection Inc.	Fabric	August 31, 1999	File closed
TR-98-017	Jones Apparel Group Canada Inc.	Fabric	July 8, 1999	Indeterminate tariff relief
TR-98-018	Utex Corporation	Fabric	July 30, 1999	File closed
TR-98-019	Tribal Sportswear Inc.	Fabric	August 24, 1999	Indeterminate tariff relief
TR-99-001	Alpine Joe Sportswear Ltd.	Fabric	January 13, 2000	File closed
TR-99-002	Albany International Canada Inc.	Yarn	December 8, 1999	Indeterminate tariff relief
TR-99-003	Western Glove Works Ltd.	Fabric	February 4, 2000	Indeterminate tariff relief
TR-99-004	Peerless Clothing Inc.	Fabric	In progress	
TR-99-005	Distex Inc.	Fabric	In progress	
TR-99-006	Coloridé Inc.	Yarn	In progress	
TR-99-007	Soltex Textiles Canada Inc.	Nonwoven	Not yet initiated	
TR-99-008	JMJ Fashions Inc.	Fabric	In progress	

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## TABLE 2

### Disposition of Reviews of Tariff Relief Recommendations Between April 1, 1999, and March 31, 2000

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Review No.	Expiry No. (Original Request No.)	Textile Input	Date of Disposition	Status/Recommendations
TA-98-004	TE-98-002 (TR-94-002 and TR-94-002A)	Yarn	June 18, 1999	Continuation of tariff relief for three years

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## TABLE 3

### Tariff Relief Recommendations in Place

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-94-001		Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Indeterminate 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
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

## Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-95-013A		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
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



## Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
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 and 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-97-012		Ballin Inc.	5407.93.30 5516.23.20	Indeterminate tariff relief
TR-97-014		Lenrod Industries Ltd.	5603.93.40	Indeterminate tariff relief
TR-97-015, TR-97-016 and TR-97-020		Helly Hansen Canada Ltd.	5903.20.24	Indeterminate tariff relief
TR-98-001		Cambridge Industries	5608.19.20	Indeterminate tariff relief
TR-98-002		Distex Inc.	6002.92.20	Indeterminate tariff relief
TR-98-004, TR-98-005 and TR-98-006		Ladcal Investments Ltd., O/A Pintar Manufacturing Nour Trading House and T.S. Simms and Company Limited	5806.10.20	Indeterminate tariff relief

## Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-98-007		Caulfeild Apparel Group Ltd.	5208.43.30	Indeterminate tariff relief
TR-98-016		Peerless Clothing Inc.	5407.93.20	Indeterminate tariff relief
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.50 5408.33.20 5408.34.20	Indeterminate tariff relief
TR-98-019		Tribal Sportswear Inc.	5209.12.30 5209.22.20 5209.32.10	Indeterminate tariff relief
TR-99-002		Albany International Canada Inc.	5405.10.20	Indeterminate tariff relief
TA-98-001	TE-97-004 (TR-95-009)	Certain dyed woven fabrics of rayon and polyester	5408.31.20 5408.32.30	Indeterminate tariff relief
TA-98-002	TE-97-003 (TR-94-009)	Vinex FR-9B fabric	5512.99.10	Indeterminate tariff relief
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	5801.35.10	Indeterminate tariff relief
TA-98-004	TE-98-002 (TR-94-002 and TR-94-002A)	Certain ring-spun yarns	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 5509.53.20 5509.53.30 5509.53.40	Three-year tariff relief

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# 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.

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### Summary of Procurement Review Activities

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	1998-99	1999-2000
<b>CASES RESOLVED BY OR BETWEEN PARTIES</b>		
Resolved Between Parties	-	-
Withdrawn	6	4
Abandoned While Filing	4	-
<b>Subtotal</b>	<b>10</b>	<b>4</b>
<b>INQUIRIES NOT INITIATED OR CONTINUED ON PROCEDURAL GROUNDS</b>		
Lack of Jurisdiction	6	6
Late Filing	7	9
No Valid Basis	4	13
<b>Subtotal</b>	<b>17</b>	<b>28</b>
<b>CASES DETERMINED ON MERIT</b>		
Complaint not Valid	14	13
Complaint Valid	10	14
<b>Subtotal</b>	<b>24</b>	<b>27*</b>
<b>IN PROGRESS</b>	<b>15</b>	<b>9</b>
<b>TOTAL</b>	<b>66</b>	<b>68</b>

\* The Tribunal actually issued 26 written determinations which related to 27 procurement complaints.

### Summary of Selected Determinations

During the fiscal year, the Tribunal issued 26 written determinations of its findings and recommendations which related to 27 procurement complaints. In 14 of the 26 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. Nine other cases were in progress at year end. Table 1 at the end of this chapter summarizes these activities.

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***Polaris Inflatable  
Boats (Canada) Ltd.***

*PR-98-032*

*Determination:  
Complaint valid  
(March 8, 1999)*

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. Brief summaries of a representative sample of such cases have been prepared for general information purposes only and have no legal status.

The Tribunal made a determination with respect to a complaint filed by Polaris Inflatable Boats (Canada) Ltd. (Polaris) concerning a solicitation of the Department of Public Works and Government Services (the Department). The solicitation was to establish a National Master Standing Offer for the purchase of a range of rigid hull inflatable boats for various government departments and agencies.

Polaris alleged that, contrary to the provisions of NAFTA and the AIT, certain government departments were applying unspecified and unannounced criteria in deciding which manufacturer's product to purchase from a National Master Standing Offer. This action had the effect of unfairly favouring its dominant competitor.

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 valid. The Tribunal recommended that the Department reopen the solicitation to competition. The Department was to ensure that the solicitation documents clearly and fully disclosed all the requirements of the procurement and clearly set out the criteria that would be used in the evaluation of bids, as well as the method of weighting and evaluating the criteria.

***Keystone Supplies  
Company***

*PR-98-034 and  
PR-98-035*

*Determination:  
Complaints not valid  
(April 19, 1999)*

The Tribunal made a determination with respect to complaints filed by Keystone Supply Company (Keystone) concerning two solicitations of the Department for the procurement of shackles, swivels and chain for the Canadian Coast Guard of the Department of Fisheries and Oceans.

Keystone alleged that the procurement process unfairly discriminated against offshore suppliers by requiring testing at a single Canadian port of entry.

After careful consideration, the Tribunal determined that NAFTA, the AGP and the AIT did not apply to the goods (from a non-Party to the agreements) proposed to be supplied by Keystone and that, as such, the procurement of these goods could not be found to have been conducted contrary to the requirements set out in the trade agreements. Therefore, the Tribunal determined that the complaints were not valid.

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**Mason-Shaw-Andrew  
Management  
Consultants**

PR-99-026

*Determination:  
Complaint valid  
(December 17, 1999)*

The Tribunal made a determination with respect to a complaint filed by Mason-Shaw-Andrew Management Consultants (MSA) concerning a solicitation of the Department on behalf of the Department of Health. The solicitation was for a study on the business impact analysis of proposed new tobacco reporting and labelling requirements for the Department of Health.

MSA alleged that, contrary to the provisions of NAFTA, the Department failed to use open tendering procedures and, thus, deprived MSA of equal access to all available information.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined, first, that the procurement was for a service covered by NAFTA and of an amount that exceeded the minimum required threshold. The Tribunal then determined that the complaint was valid. The Tribunal recommended that the Department compensate MSA in the amount of one half of the profit that MSA would have made had it been awarded the contracts relating to this procurement.

**TrizecHahn Office  
Properties Ltd.**

PR-99-047

*Inquiry not initiated/  
Procurement process  
not initiated  
(February 17, 2000)*

The Tribunal made a decision with respect to a complaint filed by TrizecHahn Office Properties Ltd. (TrizecHahn) concerning an alleged solicitation of the Department for property management services for Canada Place in Edmonton, Alberta.

TrizecHahn alleged that the Department had announced that it would compete the requirement for property management services for Canada Place, whereby it was obligated to procure the services on a sole-source basis from TrizecHahn.

Having examined the evidence contained in the complaint, the Tribunal decided not to initiate an inquiry into this complaint because it related to a procurement that had not yet been initiated, as might have been evidenced by the publication of a Notice of Proposed Procurement.

**Judicial Review of  
Procurement  
Decisions**

The Federal Court of Canada dismissed an application by the Attorney General of Canada to review a decision of the Tribunal in File Nos. PR-98-012 and PR-98-014 (Corel Corporation) that found the complaints valid.

The Federal Court of Canada dismissed an application by MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc. to review a decision of the Tribunal in File No. PR-99-034 not to issue a postponement of award order.

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The Federal Court of Canada dismissed an application by Jastram Technologies Inc. to review a decision of the Tribunal in File No. PR-98-008 not to accept a complaint for inquiry due to late filing.

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

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## TABLE 1

### Disposition of Procurement Complaints Between April 1, 1999, and March 31, 2000

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File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-98-034 and PR-98-035	Keystone Supplies Company	December 1, 1998	Decision issued April 19, 1999 Complaints not valid
PR-98-037	ITS Electronics Inc.	January 4, 1999	Decision issued April 8, 1999 Complaint not valid
PR-98-038	MIL Systems	January 5, 1999	Decision issued April 14, 1999 Complaint valid
PR-98-039	Wescam Inc.	January 19, 1999	Decision issued April 19, 1999 Complaint valid
PR-98-040	Cougar Aviation Limited	January 22, 1999	Decision issued June 7, 1999 Complaint not valid
PR-98-042	Discover Training Inc.	February 1, 1999	Decision issued May 17, 1999 Complaint valid in part
PR-98-045	Ruiter Construction Ltd.	February 5, 1999	Decision issued April 30, 1999 Complaint not valid
PR-98-046	Deloitte & Touche Consulting Group	February 8, 1999	Decision issued May 4, 1999 Complaint not valid
PR-98-047	Novell Canada, Ltd.	February 11, 1999	Decision issued June 17, 1999 Complaint valid
PR-98-050	Douglas Barlett Associates Inc.	March 1, 1999	Decision issued June 7, 1999 Complaint valid
PR-98-051	National Airmotive Corporation	March 10, 1999	Decision issued June 3, 1999 Complaint dismissed/No jurisdiction
PR-98-052	Marathon Management Company	March 11, 1999	Decision issued May 26, 1999 Complaint valid
PR-98-054	Mediascan	March 22, 1999	Not accepted for inquiry/Late filing
PR-98-055	Mxl Technologies Ltd.	March 31, 1999	Complaint withdrawn
PR-99-001	Novell Canada, Ltd.	April 8, 1999	Decision issued July 7, 1999 Complaint valid
PR-99-002	Northern Micro Inc.	April 12, 1999	Decision issued July 12, 1999 Complaint not valid
PR-99-003	Pricewaterhousecoopers	April 12, 1999	Not accepted for inquiry/Late filing
PR-99-004	Detox Environmental Inc.	April 14, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-005	Mediascan	March 22, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-006	Quality Service International Inc.	April 19, 1999	Decision issued June 28, 1999 Complaint not valid
PR-99-007	IT/NET	April 21, 1999	Decision issued July 20, 1999 Complaint valid



## Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-99-008	OM Video	April 26, 1999	Not accepted for inquiry/Late filing
PR-99-009	Offshore Systems Ltd.	May 11, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-010	Navair Inc.	May 13, 1999	Not accepted for inquiry/Late filing
PR-99-011	IBM Canada Ltd./Lotus Development Canada Ltd.	May 21, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-012	APG Solutions & Technologies Inc.	May 26, 1999	Not accepted for inquiry/Late filing
PR-99-013	Akela Multimedia Productions Ltd.	May 27, 1999	Complaint withdrawn
PR-99-014	Collectcorp. Inc., the Collection House, Allied International Audit Corp.	June 4, 1999	Not accepted for inquiry/No jurisdiction
PR-99-015	BMCI Consultants Inc.	June 23, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-016	Metro Excavation Inc. and Entreprise Marissa Inc.	July 7, 1999	Decision issued November 5, 1999— Complaint not valid
PR-99-017	Liftow Limited	July 7, 1999	Decision issued October 13, 1999— Complaint not valid
PR-99-018	Am-Tech Power Systems Ltd.	July 12, 1999	Decision issued September 29, 1999— Complaint not valid
PR-99-019	Colebrand Limited	July 13, 1999	Not accepted for inquiry/Not a designated contract
PR-99-020	IBM Canada	July 14, 1999	Decision issued November 5, 1999— Complaint valid
PR-99-021	BMCI Consulting Inc.	July 28, 1999	Decision issued October 20, 1999— Complaint not valid
PR-99-022	KB Electronics Limited	August 10, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-023	Novell Canada, Ltd.	August 11, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-024	Alcatel Canada Inc.	August 30, 1999	Decision issued December 7, 1999— Complaint valid
PR-99-025	Alcatel Canada Inc.	August 30, 1999	Decision issued November 16, 1999— Complaint valid
PR-99-026	Mason•Shaw•Andrew Management Consultants	September 18, 1999	Decision issued December 17, 1999— Complaint valid
PR-99-027	Navatar	September 21, 1999	Not accepted for inquiry/Late filing
PR-99-028	TNT Digitizing & Embroidery	September 21, 1999	Not accepted for inquiry/Late filing
PR-99-029	Interfax Systems Inc.	September 21, 1999	Not accepted for inquiry/No reasonable indication of a breach

## Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-99-030	Novell Canada, Ltd.	October 1, 1999	Not accepted for inquiry/Not a designated contract
PR-99-031	Material Resource Recovery Inc.	October 8, 1999	Not accepted for inquiry/Late filing
PR-99-032	Quatratech Services Inc.	October 12, 1999	Decision issued January 26, 2000— Complaint not valid
PR-99-033	Pall Aeropower Corporation	October 18, 1999	Complaint withdrawn
PR-99-034	MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc.	October 21, 1999	Decision issued March 6, 2000— Complaint valid
PR-99-035	Dr. John C. Luik	November 9, 1999	Decision issued March 28, 2000— Complaint valid
PR-99-036	Unisource Techonology	December 8, 1999	Accepted for inquiry
PR-99-037	Educom Training Systems Inc.	December 16, 1999	Accepted for inquiry
PR-99-038	Checker Movers 1994	December 16, 1999	Not accepted for inquiry/Not a designated contract
PR-99-039	ISO Matrix.com	December 17, 1999	Not accepted for inquiry/No reasonable indication of a breach
PR-99-040	Brent Moore & Associates	December 20, 1999	Accepted for inquiry
PR-99-041	Ruiter Construction Ltd.	December 23, 1999	Complaint withdrawn
PR-99-042	Canada Live News Agency Inc.	January 4, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-99-043	Navatar	January 7, 2000	Accepted for inquiry
PR-99-044	Navatar	January 10, 2000	Accepted for inquiry
PR-99-045	Magellan Jacques Whitford	January 27, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-99-046	Asia Communications Québec Inc. (AsiaCom)	February 8, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-99-047	TrizecHahn Offices Ltd.	February 10, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-99-048	Tecmotiv Corporation	February 24, 2000	Not accepted for inquiry/Late filing
PR-99-049	Telus Communications	February 25, 2000	Accepted for inquiry
PR-99-050	StorageTek Canada Inc.	February 28, 2000	Accepted for inquiry
PR-99-051	ACE/ClearDefense Inc.	March 8, 2000	Accepted for inquiry
PR-99-052	Landsdowne Technologies Inc.	March 10, 2000	Not accepted for inquiry/Not a designated contract
PR-99-053	Rolls-Royce Industries Canada Inc.	March 22, 2000	Accepted for inquiry

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## TABLE 2

### Procurement Cases Before the Federal Court of Canada Between April 1, 1999, and March 31, 2000

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File No.	Complainant	Appellant	File No./ Status
PR-98-008	Jastram Technologies Inc.	Jastram Technologies Inc.	A—406—98 Appeal dismissed
PR-98-012 and PR-98-014	Corel Corporation	Attorney General of Canada	A—695—98 and A—696—98 Appeals dismissed
PR-98-043	NFC Canada Limited	NFC Canada Limited	T—515—99 Appeal discontinued
PR-98-040	Cougar Aviation Limited	Cougar Aviation Limited	A—421—99
PR-98-047	Novell Canada, Ltd.	Novell Canada, Ltd.  Attorney General of Canada and Microsoft Corporation	A—440—99  A—447—99/A—448—99 Appeals discontinued
PR-99-001	Novell Canada, Ltd.	Novell Canada, Ltd.	T—1415—99 Appeal discontinued A—481—99
PR-99-023	Novell Canada, Ltd.	Novell Canada, Ltd.	A—565—99 Appeal discontinued
PR-99-030	Novell Canada, Ltd.	Novell Canada, Ltd.	A—759—99
PR-99-034	MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc.	MIL Systems (a Division of Davie Industries Inc.) and Fleetway Inc.	A—710—99 Appeal dismissed



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# CHAPTER VII

## SIMA AMENDMENTS: INQUIRIES AND REVIEWS

### Amendments to SIMA

Under the amendments to SIMA, the Tribunal will make the preliminary injury determination currently made by the Commissioner of the CCRA. The amendments also change the way in which the public interest is dealt with after a finding of injury. Finally, the amendments create distinct interim and expiry reviews. In an expiry review, the Commissioner will make the determination of whether there is a likelihood of continued or resumed dumping or subsidizing, a determination now made by the Tribunal under the current SIMA. The Tribunal will continue to make the determination of whether the continued or resumed dumping or subsidizing is likely to cause injury.

This chapter describes how the Tribunal will conduct each of the four proceedings. The Tribunal has established new or modified guidelines for these proceedings. The interim guidelines will contain more details on how parties may participate in the proceedings.

### Preliminary Injury Inquiry

Subsection 34(2) of SIMA requires the Tribunal to initiate a preliminary injury inquiry at the same time as the Commissioner initiates a dumping or subsidizing investigation. The Tribunal will publish a notice in the *Canada Gazette* and send a copy of that notice to the Commissioner and all known interested persons

In the inquiry, the Tribunal will determine whether the evidence discloses a “reasonable indication” that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury. The primary evidence will be the information received from the Commissioner and submissions from parties. The Tribunal will seek the views of parties on what are the like goods and which domestic producers comprise the domestic industry. In most cases, the Tribunal will not issue questionnaires or hold a public hearing. The Tribunal will make a preliminary determination after an inquiry of up to 60 days.

Approximately 22 days following the commencement of the inquiry, the Tribunal will distribute the public information received from the Commissioner to all parties that filed notices of participation and the confidential information to counsel who filed declarations and confidentiality undertakings. This information will include the Commissioner’s reasons for initiation, the public and confidential versions of the domestic producer’s complaint and any other information that the Commissioner took into consideration when deciding to initiate an investigation.

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**Public Interest  
Inquiry**

Parties opposed to the complaint (importers, exporters and others) will be invited to file submissions with evidence approximately 32 days after the commencement of the inquiry. The complainant and other parties supporting the complaint will have 7 days to make rebuttal submissions.

If the Tribunal finds that there is a reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, it will make a determination to that effect, and the Commissioner will continue the dumping or subsidizing investigation. If the Commissioner subsequently makes a preliminary determination of dumping or subsidizing, the Tribunal will commence a final injury inquiry under section 42 of SIMA. If there is no reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, the Tribunal will terminate the inquiry and the Commissioner will terminate the dumping or subsidizing investigation. The Tribunal will issue reasons 15 days after its decision to terminate the inquiry.

Subsection 45(1) of SIMA creates two distinct phases in the consideration of the public interest. Subsection 45(5) clarifies the options for reducing anti-dumping or countervailing duties if the Tribunal makes a report to the Minister of Finance recommending that a reduction in duties would be in the public interest. A new regulation identifies the factors that the Tribunal may take into account in its consideration of the public interest.

In the **commencement phase**, the Tribunal decides whether there are reasonable grounds to commence a public interest inquiry. In the **investigation phase**, the Tribunal conducts its inquiry. The Tribunal may choose to commence, on its own, a public interest inquiry immediately after an injury finding, or interested persons may request a public interest inquiry.

**Commencement  
Phase**

Any party to the injury inquiry or any other group or person affected by the application of the duties may make a written request for a public interest inquiry no later than 45 days after the injury finding. The guideline will detail the information to be included in a request. The key elements will be the identification of the public interest issue with supporting information. This may include, among other things, the availability of goods from other sources; the effects of the duties on domestic competition, on Canadian downstream producers of the goods and on access to goods used as inputs by downstream producers of other goods and services or access to technology; the effects on availability or prices of goods for consumers; and the effects on upstream suppliers of the goods. The Tribunal will return requests that do not meet these requirements for completion within the same 45-day time frame.

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**Investigation Phase**

When it receives a properly documented request, the Tribunal will notify all those who were sent a copy of the Tribunal's injury finding and invite responses. Responses will be due no later than 21 days after the Tribunal's notice of receipt of a request.

No later than 10 days after the deadline for responses, the Tribunal will decide whether to commence a public interest inquiry. If it decides to commence an inquiry, it will issue a notice of commencement of public interest inquiry and publish it in the *Canada Gazette*. If the Tribunal decides not to commence a public interest inquiry, it will inform all persons who filed requests or responses of that decision. Reasons will be issued within 15 days of the decision.

The Tribunal's notice of inquiry will set out the procedures for the inquiry. These will vary depending on such factors as the complexity of the public interest issues raised and the number of parties involved. There will be an opportunity for parties to file and reply to submissions. A public hearing will normally be held. Persons interested in making representations will be required to make a written request to the Secretary no later than 21 days from the date of the Tribunal's notice.

In conducting a public interest inquiry, the Tribunal will examine, in depth, the factors that it considered in reaching a decision to commence an inquiry. Parties will be invited to discuss, in their submissions and replies, potential duty reduction remedies that the Tribunal could apply if it were to be of the opinion that a reduction of duties would be in the public interest.

If, on completion of its inquiry, the Tribunal determined that no reduction or elimination of duties is warranted, it will publish a brief report with reasons. If, however, the Tribunal concluded that it is in the public interest to reduce or eliminate the duties, it will issue a report to the Minister of Finance. The report will contain specific recommendations, with supporting reasons, to eliminate or reduce the anti-dumping or countervailing duties, or a price or prices that are adequate to eliminate injury, retardation or threat of injury to the domestic industry.

The Tribunal will publish a notice of its report in the *Canada Gazette*, and a copy of the report will be sent to all parties to the inquiry.

**Interim Review**

Section 76.01 of SIMA creates a distinct interim review. In deciding whether an interim review is warranted, the Tribunal will take into account factors such as whether there is a change in circumstances or new facts since the order or finding was made. It will then determine if the order or finding (or any aspect of it)

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<b>Request for a Review</b>	<p>should be rescinded or continued, with or without amendment. For example, the domestic industry may have ceased production of like goods. An interim review may also be warranted where there are facts that were not put into evidence because they were not discoverable by the exercise of reasonable diligence during the inquiry.</p> <p>The Minister of Finance, the Commissioner or any other person or government may make a written request to the Tribunal for an interim review. The Tribunal will send copies of a properly documented request to the parties to the previous inquiry or review. They will have 15 days to file replies. The Tribunal will send a copy of any confidential requests or replies to counsel who have filed declarations and confidentiality undertakings. Where warranted, the Tribunal may consider accepting further submissions following the replies.</p> <p>The Tribunal will decide whether an interim review is warranted approximately 30 days after receiving a request. If the Tribunal decides that an interim review is not warranted, it will make an order to that effect and publish it in the <i>Canada Gazette</i>. It will issue the reasons for its decision approximately 15 days following the decision. If the Tribunal determines that an interim review is warranted, it will issue a notice of review setting out the procedures for the review. The notice will be published in the <i>Canada Gazette</i> and will be sent to all known interested parties.</p>
<b>Conduct of an Interim Review</b>	<p>The Tribunal will conduct such proceedings as the nature of the issues warrants. Parties will be given the opportunity to make written submissions to the Tribunal. The Tribunal may make its decision solely on the basis of written submissions, or it may decide to hold a public hearing to receive evidence and submissions from parties. The proceeding may include the issuance of questionnaires.</p> <p>On completion of an interim review, the Tribunal will, for the review of an entire order or finding, continue, amend or rescind it. For the partial review of an order or finding, the Tribunal may make any other order, as the circumstances require. An order which amends or continues the original order or finding will expire either: (i) on the date that the original order or finding expires; or (ii) where an expiry review is commenced before that date, on the date on which the Tribunal makes its order in that review.</p>
<b>Expiry Review</b>	<p>Section 76.03 of SIMA creates a distinct expiry review. The Tribunal will be responsible for issuing a notice of expiry of an order or finding, deciding if an expiry review is warranted, commencing an expiry review, and deciding if an</p>



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order or finding should be rescinded or continued, with or without amendment. There will be three major phases in an expiry review. The first will be the Tribunal's expiry proceeding to decide whether a review is warranted. If the Tribunal decides that a review is warranted, the second phase will be the investigation by the Commissioner to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the order or finding expires. Finally, if the Commissioner determines that such a likelihood exists, the third phase will be the Tribunal's inquiry into the likelihood of injury or retardation.

#### **Expiry Proceeding**

The Tribunal will issue a notice of expiry at least 10 months prior to the expiry of the order or finding. Persons and governments will be invited to submit their views on whether the order or finding should be reviewed. The notice will give direction on the issues that should be addressed. These include the likelihood of a continuation or resumption of dumping or subsidizing, the likely volume and price ranges of dumped or subsidized imports, information on the domestic industry's recent performance, the likelihood of injury to the domestic industry if the order or finding were allowed to expire, any other developments affecting, or likely to affect, the performance of the domestic industry, changes in circumstances, domestically or internationally, and any other relevant matter.

Submissions will be made 25 days after the notice of expiry. If there are submissions opposing a review, the Tribunal will circulate all the submissions to those that filed a submission. They will have one week to reply. The Tribunal will circulate confidential submissions to counsel who filed declarations and confidentiality undertakings. Absent exceptional circumstances, the Tribunal will not accept any further submissions following the replies.

On the 50th day after the notice of expiry, the Tribunal will determine whether a review of the order or finding is warranted. If the Tribunal determines that a review is warranted, it will issue a notice of review and notify the Commissioner, interested persons and governments of its decision. If the Tribunal determines that a review is not warranted, it will issue an order, and the reasons for its decision will be issued approximately 15 days following the order. The notice of review or the order not to review will be published in the *Canada Gazette*.

#### **Notice of Review**

The notice will set out how the Tribunal will conduct the review and briefly describe the functions of the Tribunal and those of the Commissioner in the review. It will also indicate the deadline for the Commissioner's determination concerning the likelihood of continued or resumed dumping or subsidizing.

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**Commissioner's  
Investigation**

**—Dumping or  
Subsidizing**

The Commissioner will have 120 days to determine whether the expiry of the order or finding is likely to result in the continuation or resumption of dumping or subsidizing. CCRA guidelines in respect of expiry review investigations will provide details on the process.

If the Commissioner finds that there is a likelihood of continued or resumed dumping or subsidizing, the Commissioner will provide the Tribunal with the reasons for the determination, information relating to the enforcement of the order or finding and any other information that has been taken into consideration by the Commissioner, including replies to questionnaires from exporters, importers and domestic producers. If the Commissioner finds that there is no likelihood of continued or resumed dumping or subsidizing, the Tribunal will issue an order rescinding the order or finding.

**Tribunal's Inquiry**

**—Injury**

The Tribunal will conduct the injury phase of the expiry review if the Commissioner determines that there is a likelihood of continued or resumed dumping or subsidizing to determine if the continued or resumed dumping or subsidizing is likely to result in injury or retardation. The Tribunal will issue its decision with reasons approximately 130 days after the Commissioner's determination.

Public and protected pre-hearing staff reports will be prepared and, along with the information forwarded by the Commissioner and other information collected by the Tribunal, will be distributed to parties that filed notices of participation. Confidential information and documents will be provided to counsel who filed declarations and confidentiality undertakings. Parties will be given an opportunity to make submissions and to request further information from other parties. A public hearing will normally be held.

In its inquiry, the Tribunal may take into account the factors to be set out in the *Special Import Measures Regulations*. These include factors such as the likely volume and prices of the dumped or subsidized goods, the likely performance of the domestic industry, the likely performance of the foreign industry, the likely impact of the dumped or subsidized goods on the domestic industry, anti-dumping or countervailing measures in a country other than Canada, any changes in market conditions, domestically or internationally, and any other factors relevant in the circumstances.

If the Tribunal determines that the continued or resumed dumping or subsidizing is likely to cause injury or retardation, it will issue an order continuing the order or finding, with or without amendment. If the Tribunal determines that the continued or resumed dumping or subsidizing is not likely to cause injury or retardation, the order or finding will be rescinded.

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# TRIBUNAL PUBLICATIONS

**October 1996**

*Textile Reference Guide*

**May 1999**

Annual Report for the Fiscal Year Ending March 31, 1999

**January 2000**

*Procurement Review Process: A Descriptive Guide*

**January 2000**

*Textile Reference: Annual Status Report*

**November 1999**

Confidentiality Guidelines

**Bulletin**

Vol. 11, 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.