

ANNUAL REPORT

1995-96

June 1996

**FOR THE FISCAL YEAR ENDING
MARCH 31, 1996**

ANNUAL REPORT

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MARCH 31, 1996**

**Canadian
International
Trade Tribunal**

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June 28, 1996

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, 1996.

Yours sincerely,

Anthony T. Eyton

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FIGURE

Number of Measures in Force by
GATT Signatories, 1990-94

CHAPTER I

TRIBUNAL HIGHLIGHTS 1995-96

Appointment of a New Member

On July 1, 1995, Ms. Anita Szlazak was appointed Member of the Canadian International Trade Tribunal (the Tribunal). Prior to her appointment, she held various senior positions with the Department of Communications, the Public Service Commission of Canada, the Treasury Board of Canada and the Department of the Environment.

Dumping and Subsidizing Injury Inquiries and Reviews

The Tribunal initiated five injury inquiries in fiscal year 1995-96. In two of these inquiries, the question of public interest was raised, and the Tribunal was of the view that consideration of the public interest question was warranted in one of the inquiries. This matter was still in progress as of March 31, 1996. As of the end of the fiscal year, findings had been issued in two inquiries.

The Tribunal also initiated three reviews of earlier injury findings. It issued five decisions, all of which related to reviews that were still in progress at the end of fiscal year 1994-95.

Appeals of Decisions of the Department of National Revenue

The Tribunal issued decisions on 76 appeals from decisions of the Department of National Revenue (Revenue Canada) made under the *Customs Act*, the *Excise Tax Act*, the *Special Import Measures Act* and the *Softwood Lumber Products Export Charge Act*.

The *Canadian International Trade Tribunal Regulations* (the CITT Regulations) were amended to provide the Chairman of the Tribunal with the discretion to appoint a single member in respect of appeals of Revenue Canada decisions under the *Customs Act* and some provisions of the *Excise Tax Act*. The first appeals to be heard by a single member took place in March 1996.

The Tribunal also held its first hearings by way of videoconferencing as a substitute to regional hearings in 1995-96. Due to their success, the Tribunal will expand its use of videoconferencing in fiscal year 1996-97.

Trade and Tariff References

Pursuant to a reference from the Minister of Finance dated July 6, 1994, the Tribunal was directed, under section 19 of the *Canadian International Trade Tribunal Act* (the CITT Act), to investigate requests from domestic producers for

**Bid Challenge
Authority**

tariff relief on imported textile inputs and to make recommendations in respect of those requests to the Minister of Finance. During fiscal year 1995-96, the Tribunal received 66 requests for tariff relief.

As per the terms of reference, the Tribunal submitted its first annual status report on the investigation process to the Minister of Finance on November 30, 1995, following consultations with its stakeholders.

The Tribunal provides an opportunity for redress for potential suppliers concerned about the propriety of the procurement process relative to contracts covered by NAFTA.

Effective July 1, 1995, Chapter Five (Procurement) of the *Agreement on Internal Trade* (the AIT) came into force. The Tribunal has been given jurisdiction, by regulation, to receive, inquire into and decide bid challenges arising from the AIT.

On January 1, 1996, the Tribunal was identified as the bid challenge authority with regard to the implementation of the World Trade Organization (WTO) *Agreement on Government Procurement*.

**Tribunal's Rules
of Procedure**

The Tribunal has undertaken a review of the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure) with a view toward amending and augmenting its rules, where necessary, to make them more efficient and to reflect technological innovations that may have an impact on the Tribunal's procedures. The review is also taking into account recent legislative amendments, including those implementing the *North American Free Trade Agreement* (NAFTA), the *Agreement Establishing the World Trade Organization* (the WTO Agreement) and the AIT.

**Bulletin Board
Service and
Factsline System**

In order to allow interested parties to obtain Tribunal publications (i.e. appeal decisions, notices, findings and statements of reasons, procurement determinations and textile recommendations) in a more timely and convenient manner, the Tribunal announced, on June 30, 1995, the establishment of an electronic bulletin board service and of the Factsline system.

**Inquiry Process
Under the *Special
Import Measures
Act***

The Tribunal is carrying out a review of its inquiry process under the *Special Import Measures Act* (SIMA). This review was prompted by case experience over the past few years which revealed a number of concerns about how its inquiry process was evolving.

**Consultations
with Stakeholders**

In 1995-96, the Tribunal initiated consultations with its stakeholders on a number of issues. These include: the SIMA inquiry process, the Tribunal's Rules of Procedure and the textile reference.

Tribunal's Caseload in Fiscal Year 1995-96

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 1996)
SIMA ACTIVITIES						
Injury Inquiries	-	5	5	2	-	3
Injury Reviews	5	3	8	5	-	3
Notices of Expiry	-	4	4	4	-	-
References (Advice)	1	3	4	4	-	-
APPEALS						
<i>Customs Act</i>	245	237	482	39	65	378
<i>Excise Tax Act</i>	483	54	537	32	88	417
SIMA	119	18	137	4	24	109
<i>Softwood Lumber Products Export Charge Act</i>	<u>1</u>	<u>-</u>	<u>1</u>	<u>1</u>	<u>-</u>	<u>-</u>
Total	848¹	309	1157	76	177	904
TEXTILE REFERENCE						
Requests for Tariff Relief	19	67 ²	86	24 ³	4	58
PROCUREMENT REVIEW ACTIVITIES						
Complaints (NAFTA)	2	40	42	6	28	8

1. Many of these cases were being held in abeyance, upon request of the parties, pending decisions by the Federal Court of Canada or the Tribunal on similar issues.

2. Includes the reference from the Minister of Finance (TR-94-002A).

3. The Tribunal actually issued 21 reports to the Minister of Finance which related to 24 requests for tariff relief.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

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

The main legislation governing the work of the Tribunal is the CITT Act, the CITT Regulations, the Tribunal's Rules of Procedure, SIMA, the *Customs Act* and the *Excise Tax Act*.

Mandate

The Tribunal's mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused, or are threatening to cause, material injury to a domestic industry;
- hear appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conduct inquiries 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;
- conduct inquiries into complaints by potential suppliers concerning procurement by the federal government that is covered by NAFTA, the AIT and the *WTO Agreement on Government Procurement*;
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations.

Method of Operations

In carrying out most of its responsibilities, the Tribunal conducts 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. 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, even when it is commercially confidential. The CITT Act contains provisions that strictly control access to confidential information.

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

Membership

The Tribunal may be composed of nine full-time members, including a Chairman and two Vice-Chairmen, who are appointed by the Governor in Council for a term of up to five years. 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 7 in number, are supported by a permanent staff of 87 people. Its principal officers are the Executive Director, Research, responsible for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; the Secretary, responsible for administration, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; the General Counsel, responsible for the provision of legal services to the Tribunal; and the Director of the Procurement Review Division, responsible for the investigation of complaints by potential suppliers concerning any aspect of the procurement process.

Organization

CHAIRMAN

Anthony T. Eyton

VICE-CHAIRMEN

Arthur B. Trudeau
Raynald Guay

MEMBERS

Robert C. Coates, Q.C.
Desmond Hallissey
Lyle M. Russell
Anita Szlazak

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

PROCUREMENT REVIEW DIVISION

Director
Jean Archambault

LEGAL SERVICES BRANCH

General Counsel
Gerry Stobo

**Impact of the AIT
on Tribunal
Activities**

Effective July 1, 1995, the Tribunal was given the jurisdiction to review bid challenges for federal government procurements covered by the AIT. Coverage includes contracts by specific government entities and Crown corporations for goods with a value equal to or greater than \$25,000 and for services (including construction services contracts) with a value equal to or greater than \$100,000.

For the Tribunal, this new jurisdiction will likely mean more procurement review cases, since considerably more federal government contract transactions will be covered by the bid challenge mechanism. In addition, many of the exceptions or exemptions that apply to NAFTA do not apply to the AIT. The procedures for procurements under the AIT are not as detailed as those under NAFTA.

**Impact of the
WTO Agreement
on Government
Procurement on
Tribunal Activities**

Effective January 1, 1996, the *WTO Agreement on Government Procurement*, as found in Annex 4 of the WTO Agreement, replaced the *GATT Agreement on Government Procurement*. The new agreement requires each signatory to establish a bid challenge mechanism for covered procurements. The Tribunal was given this jurisdiction for Canada. The coverage for most government entities includes contracts for goods and services with a value equal to or greater than \$259,500 and for construction services contracts with a value equal to or greater than \$9.9 million. For a small number of “government enterprises,” the monetary threshold applicable to procurements for goods and services (excluding construction services contracts) is \$708,800.

The impact on the Tribunal’s total procurement review caseload will not likely be significant, since many of the procurements that are covered by this agreement will already be covered by the bid challenge mechanism of NAFTA. The impact of the new agreement on the Tribunal will likely come in the form of logistic complexity of cases, since complaints may originate in any of the signatory countries.

Legislative Mandate of the Tribunal

Section	Authority
CITT Act	
18	Inquiries on Economic, Trade or Commercial Interests of Canada by Reference from the Governor in Council
19	Inquiries Into Tariff-Related Matters by Reference from the Minister of Finance
19.01	Safeguard Inquiries Concerning Goods Imported from the United States and Mexico
19.02	Mid-Term Reviews of Safeguard Measures and Report
20	Safeguard Inquiries Concerning Goods Imported Into Canada and Inquiries Into the Provision, by Persons Normally Resident Outside Canada, of Services in Canada
23	Safeguard Complaints by Domestic Producers
23(1.01) and (1.02)	Safeguard Complaints by Domestic Producers Concerning Goods Imported from the United States and Mexico
30.08 and 30.09	Extension Inquiries of Safeguard Measures and Report
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts

SIMA (Anti-Dumping and Countervailing Duties)

33, 34, 35 and 37	Advice to Deputy Minister
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommencement of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Advice on Public Interest Considerations
61	Appeals of Re-Determinations of the Deputy Minister Made Pursuant to Section 59 Concerning Whether Imported Goods are Goods of the Same Description as Goods to which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Deputy Minister or Other Interested Persons
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who is the Importer

Legislative Mandate of the Tribunal (cont'd)

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

CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Inquiries

Under SIMA, Canadian producers may have access to measures to offset certain forms of unfair and injurious competition from goods exported to Canada:

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

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

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Deputy Minister of National Revenue (the Deputy Minister). The Tribunal commences its inquiry at the stage of the issuance of a preliminary determination of dumping or subsidizing by the Deputy Minister. Revenue Canada begins levying provisional duties with the issuance of the preliminary determination.

In conducting its inquiries and arriving at its decisions, the Tribunal tries to ensure that all interested parties are made aware of the inquiry through the issuance of a notice that is published in the Canada Gazette and forwarded to all known interested parties. It also 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 to serve the Tribunal’s need for relevant information. This includes sending out questionnaires to manufacturers, importers and purchasers. The data that emerge from the questionnaire responses form the basis of staff reports that focus on the factors to be examined by the Tribunal in arriving at decisions regarding material injury or retardation or threat of material injury to a domestic industry. These reports become an integral part of the case record and are made available to counsel and

**Inquiries
Completed
in 1995-96**

participants in inquiries. Information that is confidential or business-sensitive in nature is protected in accordance with provisions of the CITT Act. Only counsel who have filed declarations and undertakings may have access to such confidential information.

The CITT Regulations prescribe factors that may be considered in the Tribunal's 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.

At the public hearing, the domestic producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused material injury or retardation or that it is threatening to cause material injury to a domestic industry. The domestic producers' case is usually challenged by importers and, sometimes, by exporters. After cross-examination and examination by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. Parties may also appear seeking exclusions from the finding, should the Tribunal make a finding of material injury or retardation or threat of material injury to a domestic industry. In many cases, the Tribunal calls witnesses who are knowledgeable about the industry and market in question.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination by the Deputy Minister. The Tribunal has an additional 15 days to issue a statement of reasons explaining its finding (section 43 of SIMA). A Tribunal finding of material injury or retardation or threat of material injury to a domestic industry results in the imposition of anti-dumping or countervailing duties by Revenue Canada.

The Tribunal completed two inquiries under section 42 of SIMA in fiscal year 1995-96. They are listed in Table 1. Inquiry No. NQ-95-001 dealt with caps, lids and jars, which are consumer products. Inquiry No. NQ-95-002 dealt with refined sugar, which is purchased by both consumers and industrial users that use it as an input in the production of other food products. The Canadian market for caps, lids and jars had a value of \$15 million in 1994 and, for refined sugar, a value of \$750 million.

Caps, Lids and Jars

NQ-95-001

The Tribunal found that dumped imports from the United States had caused material injury to the domestic producers of caps, lids and jars. This injury had primarily been in the form of lost production, sales and market share, price suppression and reduced profitability due to lost revenues.

This was the first inquiry to proceed under SIMA, as amended by the *World Trade Organization Agreement Implementation Act*. The Tribunal concluded that, as a result of the amendments to SIMA, in making a finding under subsection 43(1) of SIMA in respect of an inquiry under section 42, it is directed to consider whether the domestic industry either has suffered injury or is threatened with injury. In other words, injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to both under subsection 43(1) of SIMA unless it first makes a finding of no injury.

Refined Sugar

NQ-95-002

Although the Tribunal was convinced that dumped imports of refined sugar from the United States, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom and subsidized imports from the European Union had been the primary cause of the decline in refining margins of the domestic industry, it concluded that the margin suppression suffered up to the time of the preliminary determination was not sufficient for a finding of injury. The Tribunal, however, found that, in the absence of anti-dumping and countervailing duties, there was a clearly foreseen and imminent threat of material injury to the domestic industry in the form of net margin reductions, reduced profitability, lost sales, reduced production and lost market share. Fifteen special products were excluded from the Tribunal's findings. Also, imports from the Republic of Korea, which were negligible, were found not to have caused material injury and not to threaten material injury to the domestic industry.

Inquiries in Progress at the End of 1995-96

There were three inquiries in progress at the end of 1995-96. They were *Dry Pasta* (Inquiry No. NQ-95-003), *Bacteriological Culture Media* (Inquiry No. NQ-95-004) and *Portable File Cases* (Inquiry No. NQ-95-005).

Public Interest Consideration Under Section 45 of SIMA

Where, as a result of an injury inquiry, the Tribunal is of the opinion that the imposition of anti-dumping or countervailing duties may not be in the public interest, it must report this to the Minister of Finance with a statement of the facts and reasons that led to its conclusions. It is then up to the Minister of Finance to decide whether there should be any reduction in duties. Also, during an injury inquiry, interested parties may make a request to the Tribunal for an opportunity to make representations on the matter of public interest. If the Tribunal decides to hear public interest representations, it does so upon completion of the injury inquiry, following guidelines established in fiscal year 1994-95.

Reviews

During 1995-96, representations were received with respect to the findings in two inquiries. In the case of *Caps, Lids and Jars* (Public Interest Investigation No. PB-95-001), the Tribunal, after receiving representations and responses to the representations, issued a consideration which stated that the Tribunal was not convinced that a compelling public interest existed which would warrant further investigation. In the case of *Refined Sugar* (Public Interest Investigation No. PB-95-002), the Tribunal initiated an investigation subsequent to receiving representations and responses. The Tribunal held a four-day public hearing commencing at the end of March, and its decision regarding the public interest was pending at the end of the fiscal year.

The Tribunal may review its findings of injury at any time, on its own initiative or at the request of the Deputy Minister or any other person or government. Subsection 76(5) of SIMA provides for a finding to lapse automatically five years after the date of issuance, unless a review has been initiated. It is Tribunal policy to notify parties eight months prior to the expiry date of a finding. If a review is requested, the Tribunal will initiate one if it determines that it is warranted.

Upon completion of a review, the Tribunal must issue an order with reasons, pursuant to subsection 76(4) of SIMA, much as in the case of an injury inquiry. If the finding is rescinded, anti-dumping or countervailing duties are no longer levied on imports. If the Tribunal continues a finding, it remains in force for a further five years unless it is reviewed again. The Tribunal may rescind or continue a finding with or without amendment.

During the 1995-96 fiscal year, the Tribunal issued four notices of expiry for findings respecting the following goods: oil and gas well casing, boneless manufacturing beef, carbon steel welded pipe (two findings) and stainless steel welded pipe. By the end of 1995-96, reviews had been initiated for all of the findings except the finding on stainless steel welded pipe.

Interested parties may also request a review at any time, pursuant to 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. During the last fiscal year, a request was received to review the findings on refined sugar.

The purpose of a review is to determine if anti-dumping or countervailing duties remain necessary. The Tribunal assesses whether dumping is likely to resume or subsidizing is likely to continue and, if so, whether the dumping or subsidizing is likely to cause material injury to a domestic industry. Review procedures are similar to those in a SIMA injury inquiry.

Reviews Completed in 1995-96

In fiscal year 1995-96, the Tribunal completed five reviews. In the case of *Women's Footwear* (Review No. RR-94-003), the findings with respect to imports originating in the People's Republic of China were continued, with exclusions, while the findings against other countries were rescinded. Regarding *Refill Paper* (Review No. RR-94-005), the finding with respect to dumped imports from Brazil was continued, while the finding with respect to subsidized imports from Brazil was rescinded. With respect to *Whole Potatoes* (Review No. RR-94-007), the findings were continued with an amendment to exclude imports during the period from May 1 to July 31, inclusive, of each calendar year. Concerning the cases of *Carbon Steel Welded Pipe* (Review No. RR-94-004) and *Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves* (Review No. RR-94-006), the findings were continued.

Reviews in Progress at the End of 1995-96

Three reviews were in progress at the end of the fiscal year. They were *Oil and Gas Well Casing* (Review No. RR-95-001), *Carbon Steel Welded Pipe* (Review No. RR-95-002) and *Boneless Manufacturing Beef* (Review No. RR-95-003).

Table 2 summarizes the Tribunal's review activities during the fiscal year. Table 3 lists findings and orders in force as of March 31, 1996.

Advices Given Under Section 37 of SIMA

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

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

The Tribunal issued four advices during 1995-96. One advice was issued with respect to *Caps, Lids and Jars* (Reference No. RE-94-002) for a request made in the previous fiscal year. Three advices were issued with respect to requests received during the 1995-96 fiscal year. They are *Refined Sugar* (Reference No. RE-95-001), *Dry Pasta* (Reference No. RE-95-002) and *Bacteriological Culture Media* (Reference No. RE-95-003). The Tribunal

**Judicial or Panel
Review of SIMA
Decisions**

concluded, with respect to all four requests, that the evidence disclosed a reasonable indication that the dumping or subsidizing had caused material injury or was threatening to cause material injury to a domestic industry. The cases subsequently proceeded to the inquiry stage under section 42 of SIMA, and the Tribunal issued decisions in *Caps, Lids and Jars* and *Refined Sugar* during the 1995-96 fiscal year. The two other cases were in progress at the end of the fiscal year.

Anti-dumping and countervailing duty decisions can be judicially reviewed 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, parties may request judicial review by the Federal Court of Canada or by a binational panel in accordance with amendments to SIMA brought about by the *North American Free Trade Agreement Implementation Act*.

Table 4 lists the Tribunal's decisions under section 43 or 76 of SIMA that were before the Federal Court of Canada or a binational panel for judicial review in fiscal year 1995-96. Eight reviews were completed during that time. Five of the reviews were conducted by the Federal Court of Canada, and, in all instances, the applications were dismissed and the decisions of the Tribunal affirmed. Three reviews were conducted by a binational panel. In two instances, the binational panel affirmed the Tribunal's decision. In the third case, *Synthetic Baler Twine*, the binational panel affirmed the Tribunal's determination that the dumping of the subject goods had caused material injury, but remanded its determination that continued dumping would likely cause material injury, instructing the Tribunal to identify evidence in the record establishing the likelihood of future injury or, failing that, to reopen the record to obtain such evidence. The Tribunal identified the evidence that it believed established the likelihood of future injury, reopened the record and took additional evidence on the point and made a determination that the dumping would likely cause material injury to the production in Canada of like goods. The binational panel affirmed the Tribunal's determination on remand.

**WTO Dispute
Resolution**

Governments that are members of the WTO may appeal Tribunal injury findings in anti-dumping and countervailing cases to the WTO. The launching of an appeal must be preceded by inter-governmental consultations.

TABLE 1

Findings Issued Under Section 43 of SIMA Between April 1, 1995, and March 31, 1996, and Inquiries Under Section 42 of SIMA in Progress at Year End

Inquiry No.	Product	Country of Origin	Date of Finding	Finding
NQ-95-001	Caps, Lids and Jars	United States	October 20, 1995	Injury
NQ-95-002	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	November 6, 1995	No injury; but Threat of Injury (with certain product exclusions)
		Republic of Korea	November 6, 1995	No Injury or Threat of Injury
NQ-95-003	Dry Pasta	Italy	In Progress	
NQ-95-004	Bacteriological Culture Media	United States and United Kingdom	In Progress	
NQ-95-005	Portable File Cases	People's Republic of China	In Progress	

TABLE 2

Orders Issued Under Section 76 of SIMA Between April 1, 1995, and March 31, 1996, and Reviews in Progress at Year End

Review No.	Product	Country of Origin	Date of Order	Order
RR-94-003	Women's Footwear	People's Republic of China	May 2, 1995	Findings Continued (with product exclusions)
		Brazil, Poland, Romania, the former Yugoslavia and Taiwan	May 2, 1995	Findings Rescinded
RR-94-004	Carbon Steel Welded Pipe	Republic of Korea	June 5, 1995	Finding Continued
RR-94-005	Refill Paper	Federative Republic of Brazil	July 5, 1995	Finding of Dumping Continued; Finding of Subsidizing Rescinded
RR-94-006	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand and the Philippines	August 25, 1995	Findings Continued
RR-94-007	Whole Potatoes	United States	September 14, 1995	Findings Continued (with amendment)
RR-95-001	Oil and Gas Well Casing	Republic of Korea and United States	In Progress	
RR-95-002	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil	In Progress	
RR-95-003	Boneless Manufacturing Beef	European Union	In Progress	

TABLE 3

Findings and Orders in Force as of March 31, 1996¹

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-90-005	June 10, 1991	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986)
RR-90-006	July 22, 1991	Boneless Manufacturing Beef	European Union	CIT-2-86 (July 25, 1986)
NQ-90-005	July 26, 1991	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand and Venezuela	
NQ-91-001	September 5, 1991	Stainless Steel Welded Pipe	Taiwan	
NQ-91-003	January 23, 1992	Carbon Steel Welded Pipe	Brazil	
NQ-91-004	February 7, 1992	Venetian Blinds	Sweden	
RR-91-003	February 25, 1992	Twisted Polypropylene and Nylon Rope	Republic of Korea	ADT-8-82 (October 7, 1982) R-6-86 (February 17, 1987)
NQ-91-005	March 13, 1992	Toothpicks	United States	
NQ-91-006	April 21, 1992	Machine Tufted Carpeting	United States	
RR-91-004	May 22, 1992	Yellow Onions	United States	CIT-1-87 (April 30, 1987)
RR-92-001	October 21, 1992	Waterproof Rubber Footwear	Czechoslovakia, Poland, Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and People's Republic of China	ADT-4-79 (May 25, 1979) ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987)
NQ-92-001	November 30, 1992	Iceberg Lettuce	United States	
NQ-92-002	December 11, 1992	Bicycles and Frames	Taiwan and People's Republic of China	
NQ-92-004	January 20, 1993	Gypsum Board	United States	

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

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-92-003	February 25, 1993	Pocket Photo Albums and Refill Sheets	Japan, Republic of Korea, People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and Federal Republic of Germany	CIT-11-87 (February 26, 1988)
NQ-92-007	May 6, 1993	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	
NQ-92-009	July 29, 1993	Cold-Rolled Steel Sheet Products	Federal Republic of Germany, France, Italy, United Kingdom and United States	
NQ-93-001	October 18, 1993	Copper Pipe Fittings	United States	
NQ-93-002	November 19, 1993	Preformed Fibreglass Pipe Insulation	United States	
RR-93-001	November 23, 1993	Tillage Tools	Brazil	ADT-11-83 (December 28, 1983) R-9-88 (November 24, 1988)
RR-93-003	January 18, 1994	Paint Brushes and "Heads"	People's Republic of China	ADT-6-84 (June 20, 1984) R-7-84 (September 28, 1984) R-13-88 (January 19, 1989)
NQ-93-003	April 22, 1994	Synthetic Baler Twine	United States	
NQ-93-004	May 17, 1994	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	
NQ-93-005	June 22, 1994	12-Gauge Shotshells	Czech Republic and Republic of Hungary	

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
NQ-93-006	July 20, 1994	Black Granite Memorials and Black Granite Slabs	India	
NQ-93-007	July 29, 1994	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	
NQ-94-001	February 9, 1995	Delicious and Red Delicious Apples	United States	
RR-94-002	March 21, 1995	Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, Netherlands and European Union	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990)
RR-94-003	May 2, 1995	Women's Footwear	People's Republic of China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
RR-94-005	July 5, 1995	Refill Paper	Federative Republic of Brazil	NQ-89-004 (July 6, 1990)
RR-94-006	August 25, 1995	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand and the Philippines	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987) RR-89-012 (September 4, 1990) NQ-90-003 (January 2, 1991)

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Countries	Earlier Decision Nos. and Dates
RR-94-007	September 14, 1995	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986) RR-89-010 (September 14, 1990)
NQ-95-001	October 20, 1995	Caps, Lids and Jars	United States	
NQ-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	

TABLE 4

Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 1995, and March 31, 1996

Original Inquiry or Review No.	Product	Country of Origin	Forum	File No./ Status
NQ-92-007	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	FC	A-360-93 Application for Judicial Review Dismissed (May 23, 1995) A-375-93 Application for Judicial Review Dismissed (May 24, 1995)
NQ-92-008	Flat Hot-Rolled Carbon Steel Sheet Products	Federal Republic of Germany, France, Italy, New Zealand and United Kingdom	FC	A-410-93 Application for Judicial Review Dismissed (May 24, 1995)
NQ-93-003	Synthetic Baler Twine	United States	BNP	CDA-94-1904-02 Tribunal's Determination on Remand Affirmed (July 31, 1995)
NQ-93-004	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	FC	A-294-94 Application for Judicial Review Dismissed (June 21, 1995)
NQ-93-007	Corrosion-Resistant Steel Sheet Products	United States	BNP	CDA-94-1904-04 Tribunal's Finding Affirmed (July 10, 1995)
NQ-93-007	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden and United Kingdom	FC	A-411-94 Application for Judicial Review Dismissed (January 16, 1996)
RR-94-001	Beer	United States	BNP	CDA-95-1904-01 Tribunal's Decision Affirmed (November 15, 1995)

Notes: FC — Federal Court of Canada
BNP — Binational Panel

CHAPTER IV

APPEALS

Introduction

The Tribunal, among its other duties, hears appeals from decisions of the Minister of National Revenue (the Minister) or of the Deputy Minister under the *Excise Tax Act*, the *Customs Act* and SIMA. When the federal sales tax was replaced by the Goods and Services Tax on January 1, 1990, there were a number of appeals awaiting determination by the Deputy Minister and decisions awaiting appeal to the Tribunal. As a result, in the last few years, the majority of appeals heard and decided by the Tribunal involved federal sales tax assessments and determinations. However, as the bulk of these appeals have now made their way through the appeal process at Revenue Canada and the Tribunal, the latter is hearing and deciding more appeals involving tariff classification and value for duty of imported goods under the *Customs Act*. The Tribunal also hears and decides appeals concerning the application, to imported goods, of a Tribunal finding concerning dumping or subsidizing and the normal value or export price or subsidy of imported goods under SIMA.

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

Rules of Procedure

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

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth Revenue Canada's position. Once these formalities are out of the way, the Secretary of the Tribunal contacts both parties in order to schedule a hearing. Hearings are generally conducted in public, before Tribunal members.

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 cases. 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 by the opposing parties, as well as by the 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 positions.

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

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

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

**Appeals
Considered in the
Last Fiscal Year**

During the 1995-96 fiscal year, the Tribunal heard 75 appeals of which 40 related to the *Customs Act*, 32 to the *Excise Tax Act* and 3 to SIMA. Decisions were issued in 76 cases, of which 41 were heard during fiscal year 1995-96.

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	18	-	21	39
<i>Excise Tax Act</i>	9	4	19	32
<i>SIMA</i>	4	-	-	4
<i>Softwood Lumber Products Export Charge Act</i>	-	1	-	1

The table at the end of this chapter lists decisions on appeals rendered in fiscal year 1995-96.

**Summary of
Selected
Decisions**

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out from among the others, either because of the unusual nature of the product in issue or because of the legal significance of the case. A brief résumé of a representative sample of such cases follows. These summaries have been prepared for general information purposes only and have no legal status.

***Chaps-Ralph Lauren,
Division of 131384
Canada Inc. and
Modes Alto Regal v.
The Deputy Minister
of National Revenue***

*AP-94-190 and
AP-94-191*

*Decision:
Appeals allowed
(November 1, 1995)*

These were appeals under section 67 of the *Customs Act* in which the Tribunal considered whether Revenue Canada had correctly determined the value for duty of imported Polo-Ralph Lauren and Chaps-Ralph Lauren men's wear and Polo-Ralph Lauren boys' wear. Pursuant to subparagraph 48(5)(a)(i) of the *Customs Act*, commissions and brokerage fees paid in respect of the imported goods are to be added to the price paid or payable in the sale of the goods for export unless the fees paid or payable by the purchaser to the agent are for the service of representing that purchaser abroad in respect of the sale. The Tribunal found that the monies paid by the appellants to Mountain Rose (Singapore) Pte. Ltd., later named Polo Ralph Lauren Sourcing Pte. Ltd. (Mountain Rose), located in Hong Kong and Singapore, were "fees paid or payable by the purchaser to [its] agent for the service of representing [it] abroad in respect of the sale," pursuant to

subparagraph 48(5)(a)(i) of the *Customs Act* and were not, therefore, to be added to the price paid in the sale of the goods for purposes of determining the value for duty of those goods.

The Tribunal found that the evidence adduced before it showed that Mountain Rose had not exceeded the normal duties of a purchasing agent and had acted in the best interests of its principals. In particular, the Tribunal noted that Mountain Rose visited potential manufacturers on behalf of the appellants, examined samples, assisted employees of the appellants during work visits to the Orient, acted as a conduit for information between the appellants and the garment makers, inspected finished merchandise and arranged for shipments. Moreover, Mountain Rose did not acquire any proprietary interest or assume risk of ownership in the garments and did not assume any risk for damaged or lost goods.

With respect to the appellants' role in the purchases, the Tribunal noted that the appellants paid the manufacturers by opening letters of credit in their names and that the appellants controlled the activities of Mountain Rose, by having the final word on the choice of manufacturers, as well as on the type and quality of merchandise, on the price to be paid for the garments and on the details of shipment of the garments.

In the past fiscal year, the Tribunal decided four appeals under section 61 of SIMA involving the issue of whether imported goods were goods of the same description as goods subject to a finding or order of the Tribunal. Goods of the same description as goods to which a finding or order of the Tribunal apply are subject to anti-dumping and countervailing duties pursuant to section 3 of SIMA, which provides that such duties shall be paid on all dumped and subsidized goods imported into Canada in respect of which the Tribunal has made an order or finding that the dumping or subsidizing of goods of the same description has caused injury.

***Zellers Inc. v. The
Deputy Minister of
National Revenue***

AP-94-351

*Decision:
Appeal allowed
(January 25, 1996)*

The Tribunal found that imported bicycles described as having wheel diameters of 15.5 in. (39.37 cm) were not goods of the same description as bicycles, assembled or unassembled, with wheel diameters of 16 in. (40.64 cm) and greater, originating in or exported from Taiwan and the People's Republic of China and bicycle frames originating in or exported from the aforementioned countries, which are subject to a finding of the Tribunal under SIMA (Inquiry No. NQ-92-002).

The Tribunal found that the precise measurement of "16 inches (40.64 cm) and greater" used to define the lower end of the range of sizes of bicycles covered

by its finding in *Bicycles*, which on its face is clear and unambiguous, must be interpreted literally. The Tribunal reasoned that the fact that the metric equivalent of 16.0 in. (40.64 cm) was specified in the finding to the nearest one tenth of a millimetre persuasive evidence that diameters within 0.5 in. of 16.0 in. were not envisaged. The Tribunal also believes that it is significant that the appellant advertised and sold the bicycles with wheel diameters of 15.5 in. as such and did not try to pass them off as bicycles with wheel diameters of 16.0 in.

Interpreting the finding in *Bicycles* in this manner, the Tribunal concluded that the bicycles in issue, as they appeared in the marketplace, were not, in fact, “goods of the same description” as the goods to which the Tribunal’s finding applies. The Tribunal found that this conclusion was supported by Revenue Canada’s laboratory reports which compare the bicycles in issue with bicycles with wheel diameters of 16.0 in. made by the same Chinese manufacturer and marketed at the same time by the appellant. These reports note significant differences between the two bicycles, including that fact that “[t]he tires marked 15½ inches were too small and impossible to install on the rims from which the tires marked 16 inches came.”

The Tribunal further found that the bicycles in issue were not covered by the phrase “and frames thereof” in the finding in *Bicycles*, as this phrase covers importations of frames, alone, that have yet to be used as components of bicycles. Leave to appeal this decision was denied by the Federal Court of Appeal in File No. 96-A-21, April 19, 1996.

**Midlon Foods Inc. v.
The Deputy Minister
of National Revenue**

AP-94-173

Decision:
Appeal allowed
(December 7, 1995)

The Tribunal found that Mermaid brand chopped ham imported into Canada was not a product of the same description as either canned ham under 1.5 kg per can, originating in or exported from Denmark and the Netherlands, or canned pork-based luncheon meat containing more than 20 percent by weight of pork, both of which are subject to findings of the Tribunal under SIMA. (SIMA was amended by section 115 of the *Customs Tariff* on January 1, 1988, to provide that Governor-in-Council orders, made pursuant to subsection 7(1) of the *Customs Tariff*, be deemed to have been made by the Tribunal under section 43 of SIMA. The findings were continued by the Tribunal on March 16, 1990, and again on March 21, 1995.)

In considering whether the goods in issue were of the same description as canned pork-based luncheon meat, the Tribunal noted several differences. First, port-based luncheon meat can be made from a variety of pork trimmings, as distinguished from chopped ham which is made only from the large muscles of the hind leg of a pig, the highest-quality meat available from the animal. Second, chopped ham is composed of larger pieces of meat than luncheon meat and contains no additives, in stark contrast to other Canadian-made luncheon meats. Third, chopped ham is more expensive than luncheon meat and is packaged in a

can of a different shape from that of the less expensive product. Finally, the Tribunal found that chopped ham is perceived in the market as a higher-quality product than canned pork-based luncheon meat and occupies a niche in the market separate from that of luncheon meat.

In considering whether the goods in issue were of the same description as canned ham, the Tribunal found that canned ham is a different quality product composed of larger pieces of ham and contains less comminuted material than chopped ham. Moreover, the Tribunal found that canned ham is perceived in the market as a premium product that comes at a commensurate price and that chopped ham occupies a niche in the market separate from that of canned ham.

**J.V. Marketing Inc. v.
The Deputy Minister
of National Revenue**

AP-91-188(R)

Decision:
Appeal allowed
(September 8, 1995)

The Tribunal found that Nike Saucony InStep 6220 fitness walking shoes were goods of the same description as footwear subject to the Tribunal's findings under SIMA in *Women's Leather Boots and Shoes Originating in or Exported from Brazil, the People's Republic of China and Taiwan; Women's Leather Boots Originating in or Exported from Poland, Romania and Yugoslavia; and Women's Non-Leather Boots and Shoes Originating in or Exported from the People's Republic of China and Taiwan*. More particularly, it was argued by the appellant that the goods in issue were "sports footwear" which are specifically excluded from the Tribunal's findings.

The Tribunal considered fitness walking to be a sport, in that it is an athletic activity involving more or less vigorous bodily exertion for the purposes of exercise. The Tribunal was of the view that the numerous features built into the walking shoes, making them suitable for fitness walking, established that they were designed for fitness walking. Having found that the walking shoes were designed for fitness walking and that fitness walking was a sport, the Tribunal concluded that the walking shoes were sports footwear and, therefore, excluded from the Tribunal's findings.

**General Films Inc. v.
The Deputy Minister
of National Revenue**

AP-94-169

Decision:
Appeal allowed
(April 18, 1995)

The Tribunal found that imported picture frames and photo albums were not goods of the same description as photo albums with pocket, slip-in or flip-up style sheets (imported together or separately), and refill sheets thereof, originating in or exported from Japan, the Republic of Korea, the People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and the Federal Republic of Germany, which are subject to an order of the Tribunal. The Tribunal found that, although the imported picture frames and photo albums had some of the characteristics of both picture frames and photo albums and had a metal front cover which contained a glass insert for the display of one photograph, they were of post-bound construction and typically contained 40 clear plastic leaves into which photographs could be inserted.

Appeal Decisions Rendered Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.27 (Formerly Section 51.27) of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 1995, and March 31, 1996

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-94-102	I.D. Foods Superior Corp.	June 8, 1995	Dismissed
AP-94-121 and AP-94-122	Pepsi-Cola Canada Ltd. and Pepsi-Cola Canada Beverages (West) Ltd.	June 20, 1995	Dismissed
AP-94-188	HFI Hardwood Flooring Inc.	July 17, 1995	Allowed
AP-94-166	R.B. Packings & Seals Inc.	July 21, 1995	Dismissed
AP-94-116 and AP-94-186	Farmer's Sealed Storage Inc.	July 25, 1995	Dismissed
AP-94-168	Carlton Canada Limited	August 3, 1995	Dismissed
AP-94-157	Canadian Tire Corporation Ltd.	October 12, 1995	Allowed
AP-94-159	Calavo Foods, Inc.	October 12, 1995	Allowed
AP-94-240	Wynne Biomedical Ltd.	October 12, 1995	Dismissed
AP-94-232	Kappler Canada Ltd.	October 26, 1995	Allowed
AP-94-185	Hoechst Canada Inc.	October 27, 1995	Allowed
AP-94-195	Bernard Monastesse Inc.	October 27, 1995	Allowed
AP-94-256	Daniel Spiess	October 27, 1995	Dismissed
AP-94-190 and AP-94-191	Chaps-Ralph Lauren, Division of 131384 Canada Inc. and Modes Alto Regal	November 1, 1995	Allowed
AP-94-202	Canadian Satellite Communications Inc.	December 8, 1995	Allowed
AP-92-291 and AP-93-041	Princess Auto Ltd.	December 19, 1995	Dismissed
AP-93-359	Ballarat Corporation Ltd.	December 19, 1995	Allowed
AP-94-073	Best Brands Inc.	January 25, 1996	Dismissed
AP-94-215	The Perrier Group of Canada Ltd.	January 25, 1996	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-94-329	Simark Controls Ltd.	January 25, 1996	Allowed
AP-94-362	Dr. Maria Blass	January 25, 1996	Dismissed
AP-94-353	Shop-Vac Canada Ltd.	January 30, 1996	Dismissed
AP-89-284	Special Missions Group Limited	February 13, 1996	Dismissed
AP-94-357	Krueger International Canada Inc.	February 14, 1996	Allowed
AP-94-340, AP-95-133 and AP-95-136	Northern Telecom Canada Limited	February 26, 1996	Allowed
AP-94-172	Martin Lechasseur	March 6, 1996	Dismissed
AP-92-294	Shafer Valve Co. of Canada Ltd.	March 19, 1996	Dismissed
AP-95-080	Thinkway Trading Corporation	March 19, 1996	Dismissed
AP-94-359 and AP-94-360	Jewelway International Canada, Inc. and Jewelway International, Inc.	March 26, 1996	Dismissed
AP-95-013, AP-95-073 and AP-95-078	Spacesaver Corporation	March 26, 1996	Allowed
<i>Excise Tax Act</i>			
AP-94-075	Tee-Comm Electronics Inc.	April 21, 1995	Allowed
AP-92-210 and AP-92-211	Cross Lake Band of Indians and Bloodvein Indian Band	May 26, 1995	Dismissed
AP-92-282	P.A. Bottlers Ltd.	May 31, 1995	Allowed in part
AP-93-384	Les Entreprises Réal Lussier Inc.	July 17, 1995	Dismissed
AP-93-360, AP-94-061, AP-94-062 and AP-94-063	Lakefield College School, McMaster University, Wilfrid Laurier University and University of Guelph	July 17, 1995	Allowed
AP-94-147	Provincial Treasurer, Alberta Department of Health	July 21, 1995	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-94-098	Provincial Treasurer, Alberta Department of Public Works, Supply and Services	July 25, 1995	Dismissed
AP-93-004	Canadian Technical Tape Ltd.	July 26, 1995	Dismissed
AP-93-123	W. Ralston (Canada) Inc.	July 26, 1995	Dismissed
AP-94-153	Poli-Twine Canada, A Division of TecSyn International Inc.	August 3, 1995	Allowed
AP-94-154	Empire Iron Works Ltd.	August 3, 1995	Dismissed
AP-93-265	Richmond Development Corp.	August 8, 1995	Allowed
AP-94-167	Security Card Systems Inc.	August 28, 1995	Allowed in part
AP-93-052	George Strange Ltd.	September 5, 1995	Dismissed
AP-93-334	Earl A. Abas	September 5, 1995	Dismissed
AP-94-189	Bechtel-Kumagai	October 27, 1995	Dismissed
AP-93-382	Skywood P.V.C. Extrusion Inc.	October 27, 1995	Allowed in part
AP-92-264*	R.S. Harris Ltd.	December 7, 1995	Allowed in part
AP-94-160 and AP-94-163	Van City Cultured Marble Products Ltd.	December 20, 1995	Dismissed
AP-93-138	Reichert's Sales and Service Ltd.	January 22, 1996	Dismissed
AP-94-114	Aerotec Sales & Leasing Ltd.	January 25, 1996	Dismissed
AP-94-350	MacLean Hunter Limited	January 25, 1996	Allowed in part
AP-94-317	USAir, Inc.	January 26, 1996	Dismissed
AP-93-083	Leggett & Platt Incorporated	March 6, 1996	Dismissed
AP-94-198	Maurice Jacob Inc.	March 6, 1996	Allowed
AP-94-265	Super Générateur Inc.	March 6, 1996	Dismissed
AP-95-050	BDR Sportsnutrition Laboratories Ltd.	March 6, 1996	Allowed
AP-94-233	Adult Developmental Program c/o Newmarket and District Association for Community Living	March 29, 1996	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
<i>Special Import Measures Act</i>			
AP-94-169	General Films Inc.	April 18, 1995	Allowed
AP-91-188 (R)	J.V. Marketing Inc.	September 8, 1995	Allowed
AP-94-173	Midlon Foods Inc.	December 7, 1995	Allowed
AP-94-351	Zellers Inc.	January 25, 1996	Allowed
<i>Softwood Lumber Products Export Charge Act</i>			
AP-92-264*	R.S. Harris Ltd.	December 7, 1995	Allowed in part

* Appeal heard under more than one act.

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.

Tariff-Related Inquiries

Under section 19 of the CITT Act, the Minister of Finance may refer to the Tribunal for inquiry and report “any tariff-related matter, including any matter concerning the international rights or obligations of Canada in connection therewith.”

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, and amended on March 20, 1996, 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, for production. The textile inputs for which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of Schedule I to the *Customs Tariff*.

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, to company-, textile- and/or end-use-specific tariff provisions. The recommendation could be for either temporary or indeterminate tariff relief. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.

Investigations

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

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

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

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

The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.

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

**Recommendations
to the Minister**

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within any 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.

Review Process

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 or amendment of the order. A request for the amendment of the order should specify what changed circumstances justify such a request.

Annual Status Report

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 November 30, 1995, with its first annual status report on the investigation process. The status report covered the period from October 1, 1994, to September 30, 1995. In the course of preparing the status report, the Tribunal invited its stakeholders to comment on the investigation process and to make suggestions on how it could be improved. The Tribunal heard oral submissions on October 18, 1995.

On March 20, 1996, following consultations with the industry and after reviewing the Tribunal's first annual status report on the textile reference, the Minister of Finance made the following principal amendments to the terms of reference:

- 1) a new provision allows the Tribunal to recommend tariff relief for an indeterminate period (replaces recommendations for permanent relief);
- 2) the amount of time afforded the Tribunal to conduct an investigation in cases of "critical circumstances" is now any period earlier than 120 days as determined appropriate (instead of within 60 days); and
- 3) tariff investigations should not cover goods beyond those established at the commencement of the investigation, except where notice affords sufficient time for parties to respond.

<p>Recommendations Submitted During 1995-96</p>	<p>During fiscal year 1995-96, the Tribunal issued 21 reports to the Minister of Finance which related to 24 requests for tariff relief. At year end, 58 requests were outstanding, of which investigations had been commenced in 46 cases. Table 1 at the end of this chapter summarizes these activities.</p>
<p>Recommendations in Place</p>	<p>At the end of fiscal year 1995-96, the Government had implemented seven recommendations by the Tribunal. Table 2 provides a summary of recommendations implemented to date.</p>
<p>Kute-Knit Mfg. Inc. <i>TR-94-002 and TR-94-002A</i></p>	<p>A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.</p> <p>The Tribunal recommended to the Minister of Finance that the customs duty on importations of combed, ring-spun, polycotton, blended yarns be removed for a three-year period. In its report, the Tribunal indicated that there was no domestic production of combed, ring-spun yarns in Canada and that the price differential between combed, ring-spun yarns and other combed and carded yarns is significantly greater than the current MFN tariff. The primary direct benefits of granting tariff relief were estimated at more than \$250,000 per annum, if the subject yarns were all dutiable at the MFN rate of duty.</p>
<p>Woods Canada Ltd. <i>TR-94-007</i></p>	<p>Further to this recommendation, the Minister of Finance requested (Request No. TR-94-002A) that the Tribunal inquire into information submitted to him by Canadian Yarns Ltd., a producer of certain carded, open-end spun yarns, taking into account information previously submitted in Request No. TR-94-002. On the basis of its examination of the record, including the new information provided by Canadian Yarns Ltd., the Tribunal found no reason to change the recommendation in Request No. TR-94-002 and, accordingly, recommended that the customs duty on importations of combed, ring-spun, polycotton, blended yarns be removed for a three-year period.</p> <p>The Tribunal recommended to the Minister of Finance that the request for tariff relief on importations of certain 100 percent dyed nylon fabric of either plain weave or ripstop construction with a calendered finish, for use in the production of outer shells and carrying cases for sleeping bags, not be granted. The Tribunal was satisfied that Consoltex Inc., a Canadian firm, produced fabrics that are substitutable for the subject fabric and that these are sold to Canadian producers of sleeping bags for use in the production of outer shells. The Tribunal found that granting tariff relief would harm Consoltex Inc. considerably more than it would help domestic sleeping bag producers.</p>

**Château Stores of
Canada Ltd. and
Hemisphere
Productions Inc.**

TR-94-011 and
TR-94-019

The Tribunal recommended to the Minister of Finance that the customs duty on importations of five-harness satin weave fabric, woven from high-twist (over 960 turns per metre) blended yarns of 65 percent by weight polyester staple fibres and 35 percent by weight viscose rayon staple fibres, for use in the production of ladies' vests, pants, skirts, dresses, shorts and blazers and men's vests, pants and jackets, be removed for a period of two years. The Tribunal indicated in its report that, in addressing the issue of substitutability, it looked at the technical description of the allegedly substitutable domestic fabrics, their market acceptance, their price and the producers' ability to supply. While recognizing that Canadian manufacturers produced many fabrics which, to a limited degree, are substitutable for the subject fabric and that, as a result, there may be some negative impact of tariff relief on Canadian fabric producers, the Tribunal put much weight on submissions made by two Canadian textile firms that stated that they were in the process of developing a domestic supply of a high-twist woven fabric with the same features, qualities and market acceptance as the subject fabric. In the Tribunal's view, this supported the fact that the current domestic fabrics are not direct substitutes for the subject fabric. The primary direct benefits of granting tariff relief were estimated at just over \$1.1 million per annum, if the subject fabric were dutiable under the MFN tariff.

**Healtex
Manufacturing Inc.**

TR-94-015

The Tribunal recommended to the Minister of Finance that the request for tariff relief on importations of a three-layer construction fabric known as "Mertex Plus," used in the manufacture of surgical gowns and drapes, not be granted. The Tribunal was satisfied that there are domestic textile producers that have invested heavily to produce substitutes for the subject fabric and that granting tariff relief would adversely affect the work that they have done to date and their future plans. The Tribunal concluded that granting the tariff relief would harm Canadian producers considerably more than it would help the requester.

**Hi Fibre Textiles
(Sugoi) Ltd.**

TR-94-014

The Tribunal recommended to the Minister of Finance that the request for the removal of the customs duty on importations of a 100 percent polyester double knit jersey fabric known as TD1300C (Fieldsensor), for use in the production of women's and unisex cycling jerseys, be denied, but recommended reducing the Canadian MFN tariff to equal the U.S. MFN tariff on imports for an indeterminate period of time. In the view of two panel members, granting the tariff relief as requested would likely hurt Canadian producers more than it would help the requester, but reducing the Canadian MFN tariff to equal the U.S. MFN tariff on imports of the subject fabric would provide a commercial benefit to the requester and improve its competitiveness, while resulting in little or no cost to Canadian producers. The dissenting member was of the view that the reduction of

the tariff as recommended would result in costs to Canadian producers that would significantly exceed the benefits accruing to the requester and, consequently, would have denied the request. The primary direct benefits of granting tariff relief were estimated to be in excess of \$9,300 per annum.

TABLE 1**Disposition of Requests for Tariff Relief Between April 1, 1995, and March 31, 1996**

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-94-002	Kute-Knit Mfg. Inc.	yarn	July 5, 1995	Three-year tariff relief
TR-94-002A	Kute-Knit Mfg. Inc.	yarn	January 22, 1996	Three-year tariff relief
TR-94-003	Canastro Textiles Inc.	yarn	Not yet initiated	
TR-94-004	Woods Canada Ltd.	fabric	June 8, 1995	Permanent tariff relief
TR-94-005	Hemisphere Productions Inc.	fabric	June 22, 1995	Three-year tariff relief
TR-94-007	Woods Canada Ltd.	fabric	July 6, 1995	Tariff relief not granted
TR-94-008	Château Stores of Canada Ltd.	fabric	February 13, 1996	Tariff relief not granted
TR-94-009	Équipement Saguenay (1982) Ltée	fabric	June 5, 1995	Three-year tariff relief
TR-94-010	Palliser Furniture Ltd.	fabric	August 23, 1995	Permanent tariff relief
TR-94-011 and TR-94-019	Château Stores of Canada Ltd. and Hemisphere Productions Inc.	fabric	September 19, 1995	Two-year tariff relief
TR-94-012	Peerless Clothing Inc.	fabric	January 17, 1996	Indeterminate tariff relief
TR-94-013 and TR-94-016	MWG Apparel Corp.	fabric	November 30, 1995	Permanent tariff relief
TR-94-014	Hi Fibre Textiles (Sugoi) Ltd.	fabric	January 29, 1996	Indeterminate tariff relief
TR-94-015	Healtex Manufacturing Inc.	fabric	October 2, 1995	Tariff relief not granted
TR-94-017 and TR-94-018	Elite Counter & Supplies	fabric	August 31, 1995	Permanent tariff relief
TR-94-020	Sunsoakers Inc.	fabric	January 17, 1996	Tariff relief not granted
TR-94-021	Château Stores of Canada Ltd.	fabric	July 4, 1995	Withdrawn

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-001	Dunlop Tires (Canada) Ltd.	n/a	May 1, 1995	Terminated - Lack of jurisdiction
TR-95-002	J.A. Besner & Sons (Canada) Ltd.	fabric	November 9, 1995	Terminated - Non-compliance
TR-95-003	Landes Canada Inc.	fabric	October 4, 1995	Permanent tariff relief
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	fabric	March 6, 1996	Indeterminate tariff relief
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	fabric	March 6, 1996	Indeterminate tariff relief
TR-95-006	Pelion Mountain Products Ltd.	fabric	February 16, 1996	Tariff relief not granted
TR-95-007 and TR-95-008	Pararad Inc.	fabric	In Progress	
TR-95-009	Peerless Clothing Inc.	fabric	In Progress	
TR-95-010, TR-95-033 and TR-95-034	Freed & Freed International Ltd., E. & J. Manufacturing Ltd. and Fen-nelli Fashions Inc.	fabric	In Progress (TR-95-033 — Withdrawn on November 23, 1995)	
TR-95-011	Louben Sportswear Inc.	fabric	March 21, 1996	Indeterminate tariff relief
TR-95-012	Perfect Dyeing Canada Inc.	yarn	February 26, 1996	Indeterminate tariff relief
TR-95-013	Doubletex	fabric	In Progress	
TR-95-014	Palliser Furniture Ltd.	fabric	In Progress	
TR-95-015 to TR-95-032, TR-95-038 to TR-95-042, TR-95-046, TR-95-048 to TR-95-050 and TR-95-055	Fantastic-T Knitter Inc., B.C. Garment Factory Ltd. and Global Garment Factory Ltd.	fabric	In Progress	

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-035, TR-95-043 and TR-95-044	Beco Industries Ltd.	fabric	In Progress	
TR-95-036	Canadian Mill Supply Co. Ltd.	fabric	In Progress	
TR-95-037	Paris Star Knitting Mills Inc.	fabric	In Progress	
TR-95-045	Yeadon Fabric Structures Ltd.	fabric	Not yet initiated	
TR-95-047	B.C. Garment Factory Ltd.	yarn	In Progress	
TR-95-051	Camp Mate Limited	fabric	In Progress	
TR-95-052	National-General Filter Products Ltd.	fabric	Not yet initiated	
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	fabric	In Progress	
TR-95-054	Handler Textile (Canada) Inc.	fabric	In Progress	
TR-95-056	Sealy Canada Ltd.	fabric	In Progress	
TR-95-057	Doubletex	fabric	Not yet initiated	
TR-95-058	Doubletex	fabric	Not yet initiated	
TR-95-060	Triple M Fiberglass Manufacturing Ltd.	fabric	Not yet initiated	
TR-95-061	Camp Mate Limited	fabric	Not yet initiated	
TR-95-062	Freed & Freed International Ltd.	fabric	Not yet initiated	

Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-063	Buckeye Industries, Division of Williamson- Dickie Mfg. Co.	fabric	Not yet initiated	
TR-95-064	Lady Americana Sleep Products Inc.	fabric	Not yet initiated	
TR-95-065	Elran Furniture Ltd.	fabric	Not yet initiated	
TR-95-066	Lenrod Industries Ltd.	fabric	Not yet initiated	

TABLE 2

Tariff Relief Recommendations in Place

Request No.	Requester	Order in Council	Date of Order in Council	Duration
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	P.C. 1995-833	May 30, 1995	Permanent tariff relief
TR-94-004	Woods Canada Ltd.	P.C. 1995-1200	July 26, 1995	Permanent tariff relief
TR-94-005	Hemisphere Productions Inc.	P.C. 1995-1200	July 26, 1995	Three-year tariff relief
TR-94-009	Équipement Saguenay (1982) Ltée	P.C. 1995-1200	July 26, 1995	Three-year tariff relief
TR-94-017 and TR-94-018	Elite Counter & Supplies	P.C. 1995-2100	December 13, 1995	Permanent tariff relief
TR-95-003	Landes Canada Inc.	P.C. 1995-2100	December 13, 1995	Permanent tariff relief

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may now challenge procurements that they believe have not been carried out in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT or the *WTO Agreement on Government Procurement*. 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. Once the complaint meets the criteria for filing, the government institution and all other interested parties are sent a formal notification of the complaint. A copy of the complaint is sent to the government institution. When the Tribunal decides to conduct an inquiry, an official notice of the complaint is 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 report responding to the allegations. The complainant is then sent a copy of the Government Institution Report 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 comment. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

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

Summary of Procurement Review Activities

	1994-95	1995-96
CASES RESOLVED BY OR BETWEEN PARTIES		
Resolved Between Parties	1	3
Withdrawn	2	3
Abandoned While Filing	<u>1</u>	<u>4</u>
Subtotal	4	10
INQUIRIES NOT INITIATED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	9	8
Late Filing	2	4
No Valid Basis	<u>3</u>	<u>6</u>
Subtotal	14	18
CASES DETERMINED ON MERIT		
No Valid Basis	4	3
Upheld on Merit	<u>1</u>	<u>3</u>
Subtotal	5	6
IN PROGRESS	<u>2</u>	<u>8</u>
TOTAL	25	42

Note: All 1995-96 complaints were lodged by Canadian suppliers.

**Summary of
Decisions*****Martin Marietta
Canada Ltd.****94N66T-021-0020*

During fiscal year 1995-96, the Tribunal issued six written determinations of its findings and recommendations. Eight other cases were in progress at year end. The table at the end of this chapter summarizes these activities, as well as those cases resolved by or between parties.

A complaint was filed relating to the award of a contract by the Department of Public Works and Government Services (the Department) for the supply of a Vessel Traffic Service simulator for the Department of Transport Canadian Coast Guard College in Sydney, Nova Scotia. The Tribunal determined that the complaint was valid. In the Tribunal's view, the Department's finding that all bidders were not responsive was procedurally in compliance with Chapter Ten of NAFTA. However, the negotiation contemplated under Article 1014 of NAFTA envisages that suppliers be permitted to submit new or amended tenders during the negotiation process and to submit final tenders once negotiations have concluded. Although the Department was of the opinion that "[a]ll firms agreed" to a change in the bid evaluation method, the Tribunal found that, although all firms extended their bid acceptance period, two suppliers expressed, in writing, their disagreement to the change in the evaluation method. The Tribunal also found that the Department had no intention of permitting the submission of new or amended tenders and, thus, was not conducting negotiations in accordance with the provisions of Chapter Ten of NAFTA. Indeed, in this situation, where there were no responsive bidders and where the initial procurement was substantially modified, the Tribunal found that the Department had no choice but to re-issue the solicitation in accordance with the requirements of Chapter Ten of NAFTA. Pursuant to subsections 30.15(4) and 30.16(1) of the CITT Act, the Tribunal awarded the complainant its reasonable costs incurred in preparing a response to the solicitation and in relation to filing and proceeding with its complaint.

***R.E.D. Electronics
Inc.****94N660-021-0024*

A complaint was filed relating to the award of a contract by the Department for the supply of distributed intelligent network hub systems, including installation, integration, the provision of cabling services and on-site maintenance services for a three-year period, for the Department of Finance's internal network in Ottawa. The Tribunal determined that the complaint was valid. The Tribunal found that the Department's interpretation of the specification was at variance with the language of the specification, when viewed as a whole. The Department did not originally intend such an interpretation, as evidenced in its proposal clarification questions sent to the contract awardee after bid closing. In order for the contract awardee's proposal to have been considered responsive, it was necessary to ignore the overall meaning and intention of the specification. Although the solution proposed by the contract awardee may have met the

performance objectives in an original and unique manner, to accept it, when it was not compliant with the wording of essential requirements of the Request for Proposal, was a violation of Article 1015(4)(d) of NAFTA. Pursuant to subsections 30.15(4) and 30.16(1) of the CITT Act, the Tribunal awarded the complainant its reasonable costs incurred in preparing a response to the solicitation and in relation to filing and proceeding with its complaint.

Mechron Energy Ltd.

PR-95-001

A complaint was filed relating to the award of a contract by the Department for the supply of five uninterruptible power systems for installation at the Department of Transport Area Control Centres across Canada. The Tribunal determined the complaint was valid. The Tribunal concluded that the additional information provided by the contract awardee as a result of the “clarification” process amounted, in fact, to substantive modifications, revisions or alterations of the contents of the contract awardee’s original proposal in respect of a number of essential requirements. The Tribunal found that the Department overlooked, varied or put aside the evaluation rules that it had set out in the Request for Proposal and, in so doing, improperly declared compliant a proposal which, at the time of bid opening, failed to meet certain mandatory and rated desirable technical requirements, each and every one of which was an essential requirement as defined in the Request for Proposal. In the Tribunal’s view, this constituted a breach of Article 1015(4)(a) of NAFTA. Pursuant to subsections 30.15(4) and 30.16(1) of the CITT Act, the Tribunal awarded the complainant its reasonable costs incurred in preparing a response to the solicitation and in relation to filing and proceeding with its complaint. The Tribunal also recommended that the contract be terminated and that it be awarded to the complainant. The Tribunal, considering the possible impact of its decision, recommended, as an alternative, that the Department present to the Tribunal, within 30 days of its decision, a proposal for compensation, developed jointly with the complainant, that recognizes the prejudice suffered by the complainant in being deprived of the contract and of the opportunity to profit therefrom.

AmeriData Canada Ltd.

PR-95-011

A complaint was filed concerning the procurement by the Department for the supply of informatic professional services for the Department of National Defence at Canadian Forces Base Borden, Ontario. The Tribunal was of the view, based on the evidence before it, that the Department, in conducting its evaluation, did not deviate from what was stipulated in the Request for Proposal, and no new unannounced criteria were added. The Tribunal determined, in consideration of the subject matter of the complaint, that the procurement was conducted according to Chapter Five of the AIT and, therefore, that the complaint was not valid.

**Cabletron Systems of
Canada Ltd.**

PR-95-018

A complaint was filed concerning the procurement by the Department for the supply, by means of a National Individual Standing Offer, of concentrators and Ethernet switches for the Royal Canadian Mounted Police across Canada. The Tribunal, having examined the evidence and arguments presented by both parties and having considered the obligations specified in both the AIT and NAFTA, concluded that the complaint was not valid. The Tribunal was of the view that the specification was not unnecessarily restrictive and that the Department had, in good faith, balanced its requirements and the concerns expressed by various potential suppliers both before and after the publication of a Notice of Proposed Purchases up to bid closing.

**Array Systems
Computing Inc.**

PR-95-024

A complaint was filed concerning the procurement by the Department for the provision of an advanced communications electronic support measure system architectural study for Defence Research Establishment Ottawa, a constituent of the Department of National Defence. The Tribunal, having examined the evidence and arguments presented by both parties and having considered the obligations specified in the AIT, concluded that the complaint was not valid. The procedure followed in establishing the Statement of Work contained some checks to ensure that the requirement was not formulated in such a manner as to deliberately exclude certain suppliers (on this point, the Tribunal commented that there may be some merit in setting up a standing committee at the scientific authority to review technical specifications); the requirement of specific expertise for certain proposed team members was not unreasonable; and, although there may be some subjectivity in the application of these types of evaluation criteria, this is not prohibited by the AIT and, in fact, in the opinion of the Tribunal, professional judgement is perfectly normal and to be expected for any type of procurement.

Disposition of Procurement Complaints Between April 1, 1995, and March 31, 1996

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
94N66T-021-0020	Martin Marietta Canada Ltd.	January 16, 1995	Decision issued on April 20, 1995 Complaint valid/Complainant awarded complaint and bid preparation costs
94N6660-021-0024	R.E.D. Electronics Inc.	April 7, 1995	Decision issued on July 26, 1995 Complaint valid/Complainant awarded complaint and bid preparation costs
PR-95-001	Mechron Energy Ltd.	April 5, 1995	Decision issued on August 18, 1995 Complaint valid/Complainant awarded complaint and bid preparation costs/Recommended that complainant be awarded contract or, in the alternative, compensation
PR-95-002	Fulton Boiler Works Canada Inc.	April 5, 1995	Not accepted for inquiry/Late filing
PR-95-003	International Rose Reporting (Central) Inc.	April 6, 1995	Not accepted for inquiry/Not a designated contract
PR-95-004	Pathfinder Systems Design Ltd.	April 21, 1995	Not accepted for inquiry/Not a designated contract
PR-95-005	Keystone Supplies Company	May 9, 1995	Not accepted for inquiry/No reasonable indication of breach
PR-95-006	Training Task Group	May 23, 1995	Abandoned while filing
PR-95-007	André McNicoll Communications International	June 7, 1995	Abandoned while filing
PR-95-008	Mercury Machine & Mfg. Co.	June 23, 1995	Resolved between parties
PR-95-009	Blair's Mechanical Inc.	June 28, 1995	Not accepted for inquiry/No reasonable indication of breach
PR-95-010	Farrell & Associates Inc.	September 25, 1995	Resolved between parties
PR-95-011	AmeriData Canada Ltd.	September 28, 1995	Decision issued on February 9, 1996 Complaint not valid
PR-95-012	Democracy Education Network	September 28, 1995	Not accepted for inquiry/Not a designated contract
PR-95-013	Enconair Ecological Chambers Inc.	November 13, 1995	Not accepted for inquiry/No reasonable indication of breach

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-95-014	Enconair Ecological Chambers Inc.	November 13, 1995	Not accepted for inquiry/No reasonable indication of breach
PR-95-015	FirstMark Technologies Ltd.	November 22, 1995	Not accepted for inquiry/Late filing
PR-95-016	Greenwood Environmental Inc.	November 27, 1995	Not accepted for inquiry/Not a government institution
PR-95-017	C.A.E. Aviation Ltd.	December 1, 1995	Not accepted for inquiry/Procurement initiated before coming into force of the AIT
PR-95-018	Cabletron Systems of Canada Ltd.	December 5, 1995	Decision issued on March 8, 1996 Complaint not valid
PR-95-019	Bristol Aerospace Limited	December 5, 1995	Not accepted for inquiry/Procurement initiated before coming into force of the AIT
PR-95-020	Hewlett Packard (Canada) Ltd.	December 12, 1995	Resolved between parties
PR-95-021	I.M.P. Group	December 15, 1995	Not accepted for inquiry/Procurement initiated before coming into force of the AIT
PR-95-022	Tayco Panelink Ltd.	December 22, 1995	Not accepted for inquiry/Late filing
PR-95-023	Array Systems Computing Inc.	January 5, 1996	Accepted for inquiry
PR-95-024	Array Systems Computing Inc.	January 10, 1996	Decision issued on March 25, 1996 Complaint not valid
PR-95-025	Ahearn & Soper Inc.	January 15, 1996	Complaint withdrawn
PR-95-026	Ahearn & Soper Inc.	January 18, 1996	Not accepted for inquiry/Not a designated contract and procurement initiated before coming into force of the AIT
PR-95-027	Kamco Food Equipment Ltd.	January 27, 1996	Abandoned while filing
PR-95-028	Bay Networks Canada Inc.	February 29, 1996	Complaint withdrawn
PR-95-029	DGS Information Consultants	February 14, 1996	Complaint withdrawn
PR-95-030	Versatech Products Inc.	February 16, 1996	Not accepted for inquiry/Late filing
PR-95-031	FPG/HRI Joint Venture	February 26, 1996	Accepted for inquiry
PR-95-032	Reicore Tech. Inc.	February 27, 1996	Abandoned while filing

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-95-033	Emcon Emanation Control Limited	March 5, 1996	Accepted for inquiry/Postponement of award order issued
PR-95-034	P & L Services	March 11, 1996	Not accepted for inquiry/No reasonable indication of breach
PR-95-035	Secure Technologies International Inc.	March 15, 1996	Accepted for inquiry/Postponement of award order issued
PR-95-036	Kaycom Inc.	March 19, 1996	Not accepted for inquiry/No reasonable indication of breach
PR-95-037	Taftek	March 22, 1996	Accepted for inquiry
PR-95-038	Équipement Industriel Champion Inc.	March 25, 1996	Accepted for inquiry/Postponement of award order issued
PR-95-039	Conair Aviation, A division of Conair Aviation Ltd.	March 25, 1996	Accepted for inquiry/Postponement of award order issued
PR-95-040	ISM Information Systems Management Corporation	March 27, 1996	Being filed

CHAPTER VII

USE OF ANTI-DUMPING AND COUNTERVAILING MEASURES

Each year since 1990, the Tribunal's research staff has produced studies on the anti-dumping system in Canada. This year, in a paper entitled Canadian & International Use of Anti-Dumping and Countervailing Measures: Data Update 1988-1994, the Research Branch updated the estimates of imports affected by anti-dumping measures contained in a 1995 staff working paper (Canadian & International Use of Anti-Dumping and Countervailing Measures, July 1995). In addition, this paper includes Canadian imports affected by countervailing duty measures and thereby brings the domestic overview in line with data provided at the international level. A summary of the paper follows.

Canada's Use of Anti-Dumping and Countervailing Measures

In 1994, there were 37 injury findings in force in Canada covering 95 countries. In that year, the Tribunal issued 4 injury findings covering 18 countries. Two of the new findings concerned anti-dumping measures respecting hot-rolled carbon steel plate and corrosion-resistant steel sheet products imported from 15 countries. In addition, the Tribunal rescinded 5 findings affecting imports from 9 countries, of which 4 of the findings covered products originating in the United States. The data also now include 4 countervailing duty findings issued prior to 1994.

Canadian Anti-Dumping and Countervailing Measures, 1988-94

Year ²	Actions ¹			Findings ¹
	Added	Expired/ Rescinded	In Place (Dec. 31)	In Place (Dec. 31)
1988	3	22	140	64
1989	2	14	128	59
1990	10	60	78	38
1991	12	17	73	35
1992	4	7	70	33
1993	16	0	86	38
1994	18	9	95	37

1. Actions are measured on a country-specific basis. Findings include a number of actions on the same product. For example, the Tribunal finding in Inquiry No. NQ-89-003, *Women's Footwear*, represents six actions: one each for Brazil, the People's Republic of China, Poland, Romania, Taiwan and Yugoslavia.
2. Counting convention: the first year of a measure is the year of the preliminary determination; the last is the year prior to the year in which the measure was rescinded or expired.

Source: Tribunal Research Branch Data Base.

As a result of the 1994 injury findings, an additional \$161 million of imports were affected by the new anti-dumping measures in that year. However, the rescission of findings in 1994 resulted in the removal of anti-dumping duties on imports valued at \$40 million.

Imports of primary metals, textiles and leather goods continue to be the major product categories affected by Canadian anti-dumping and countervailing measures. These three product categories accounted for 61 percent of the total value of imports during the 1988-94 period. The average proportion of imports covered by these measures has changed little since the previous report and continues at 0.6 percent of total manufactured and agricultural imports.

Canadian Imports Affected by Anti-Dumping and Countervailing Measures, 1988-94

(\$000)

Year	Total Imports (1)	Value of Imports Affected			Total (5)	As a Percentage of Total Imports (6)
		Added by New Inquiries (2)	Rescinded and Expired (3)	Change in Import Value for Findings in Place (4)		
1988	94,147,427	21,267	436,633	233,803	744,111	0.79
1989	120,771,230	462	12,691	406,116	1,137,998	0.94
1990	120,821,268	199,235	806,257	(2,824)	528,152	0.44
1991	120,362,894	328,285	56,035	(44,890)	755,512	0.63
1992	132,128,011	104,001	70,512	(67,531)	721,470	0.55
1993	152,102,323	149,489	0	(6,111)	864,848	0.57
1994	181,612,512	161,012	39,601	50,936	1,037,195	0.57
Average 1988-94	131,706,524	137,679	203,104	81,357	827,041	0.63

Notes:

1. Column 5 end of period equals column 5 for the previous year plus column 2 minus column 3 plus column 4.
2. Column 6 equals column 5 divided by column 1.

Source: Tribunal Research Data Base and Statistics Canada.

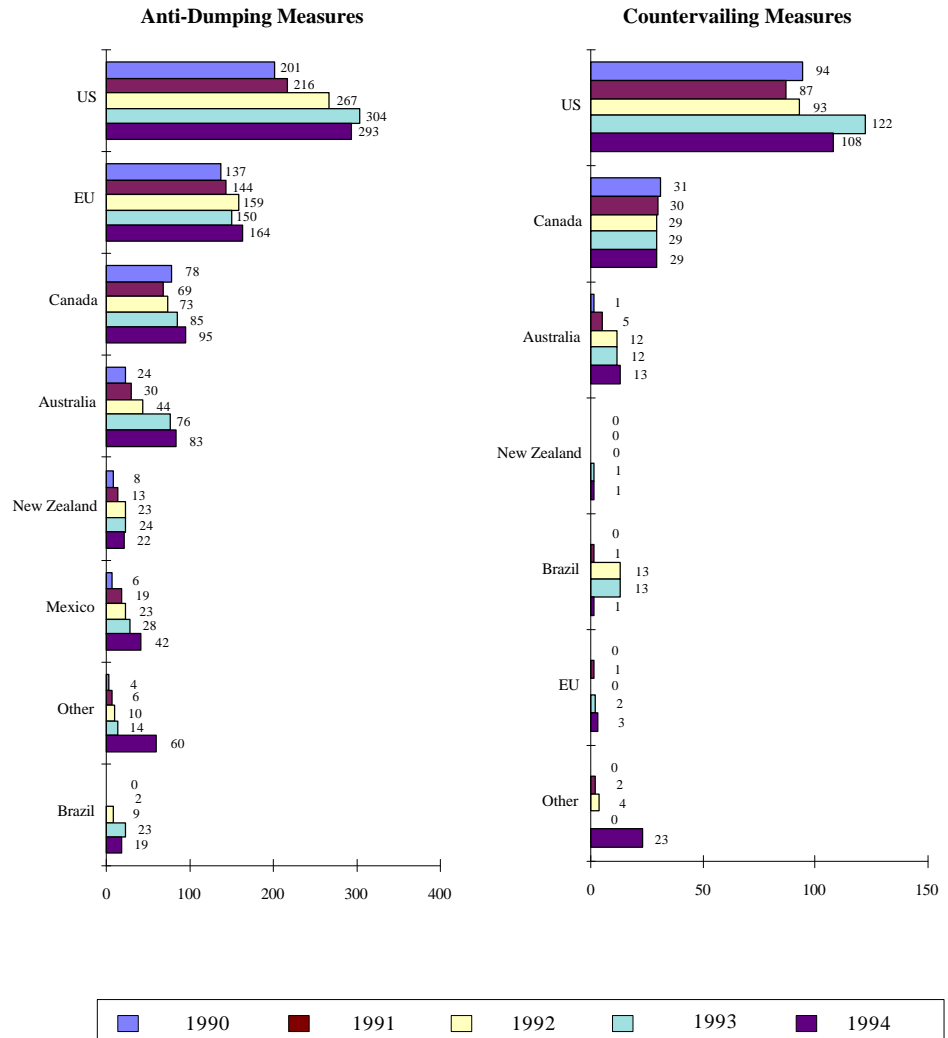
Imports by country indicate that U.S. imports represented 66.9 percent of all imports into Canada over the 1988-94 period, but accounted for only 38.5 percent of all imports affected by anti-dumping and countervailing measures, up from 33.3 percent in the 1995 report. While the U.S. imports accounted for approximately two thirds of all imports into Canada during the 1988-94 period, at \$616 billion, only 0.36 percent of these imports were affected by anti-dumping and countervailing measures.

**Measures in
Force by GATT
Signatories**

The number of anti-dumping measures in force by GATT (the World Trade Organization since January 1, 1995) signatories increased from 704 to 778 between 1993 and 1994. Most of the increase is represented by the growing use of anti-dumping measures by countries grouped as "Other" in the following graph. These countries include Turkey, India, the Republic of Korea, Argentina and Mexico.

The number of countervailing measures in force declined from 179 in 1993 to 178 in 1994. During these two years, the United States accounted for two thirds of all measures in force by GATT signatories, although the number of U.S. actions declined by 14. However, this decline was offset by the addition of 23 new actions which came into force by countries grouped as "Other" in the following graph. Venezuela accounted for 22 of the new countervailing actions in 1994.

Number of Measures in Force by GATT Signatories, 1990-94



Source: GATT semi-annual reports and published reports by national authorities.

PUBLICATIONS

June 1995

Annual Report for the Fiscal Year Ending March 31, 1995

September 1994

Textile Reference Guide

November 1995

Textile Reference: Annual Status Report

January 1996

Procurement Review Process — A Descriptive Guide

Bulletin

Vol. 7, Nos. 1 - 4

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A series of pamphlets designed to inform the public of the work of the Tribunal are available. Pamphlets in the series include:

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- Appeals from Customs and Excise Decisions
- Dumping and Subsidizing Injury Inquiries
- Import Safeguard Complaints by Domestic Producers
- Import Safeguard Complaints Concerning the General Preferential Tariff (GPT) or CARIBCAN
- General Inquiries into Economic, Trade and Tariff Matters

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