
ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2001**

**Canadian
International
Trade Tribunal**

© Minister of Public Works and Government Services Canada 2001

Cat. No. F40-2001E-IN

ISBN 0-662-30095-5

ISSN 0846-6629

Accessible on the Tribunal's Web site
at www.citt.gc.ca

Exemplaires en français aussi disponibles
sur le site Web du Tribunal
au www.tcce.gc.ca



CHAIRMAN

PRÉSIDENT

May 17, 2001

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, 2001.

Yours sincerely,

Pierre Gosselin

TABLE OF CONTENTS

Chapter I	Tribunal Highlights in Fiscal Year	1
Chapter II	Mandate, Organization and Activities of the Tribunal	7
Chapter III	Dumping and Subsidizing Injury Inquiries and Reviews	13
Chapter IV	Appeals	35
Chapter V	Economic, Trade, Tariff and Safeguard Inquiries	47
Chapter VI	Procurement Review	61
Chapter VII	Toward the Electronic Administrative Record - The Tribunal's Experience	71
	Tribunal Publications Issued During the Fiscal Year	79

LIST OF TABLES

Chapter I	Tribunal's Caseload in Fiscal Year	5
Chapter II	Organization	8
	Legislative Mandate of the Tribunal	10
Chapter III	Preliminary Determinations of Injury Issued Under Subsection 37.1(1) of SIMA Between April 1, 2000, and March 31, 2001, and Preliminary Injury Inquiries Under Subsection 34(2) of SIMA in Progress at Year End	27
	Findings Issued Under Section 43 of SIMA Between April 1, 2000, and March 31, 2001, and Inquiries Under Section 42 of SIMA in Progress at Year End	28
	Orders Issued Under Section 76 of SIMA Between April 1, 2000, and March 31, 2001, and Reviews in Progress at Year End	29
	SIMA Findings and Orders in Force as of March 31, 2001	30
	SIMA Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 2000, and March 31, 2001	33
Chapter IV	Decisions on Appeals	37
	Appeal Decisions Rendered Under Section 67 of the <i>Customs Act</i> and Section 81.19 of the <i>Excise Tax Act</i> Between April 1, 2000, and March 31, 2001	42
	Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 2000, and March 31, 2001, and Pending as of March 31, 2001	44
	Appeal Decisions of the Federal Court of Canada Rendered Between April 1, 2000, and March 31, 2001	45

Chapter V	Disposition of Requests for Tariff Relief Between April 1, 2000, and March 31, 2001	53
	Disposition of a Request for Reconsideration Between April 1, 2000, and March 31, 2001	54
	Tariff Relief Recommendations in Place	55
Chapter VI	Summary of Procurement Review Activities	62
	Disposition of Procurement Complaints Between April 1, 2000, and March 31, 2001	65
	Procurement Cases Before the Federal Court of Canada Between April 1, 2000, and March 31, 2001	69

CHAPTER I

TRIBUNAL HIGHLIGHTS IN FISCAL YEAR

Members

On January 1, 2001, Ms. Patricia M. Close was reappointed to the position of Vice-Chairperson of the Canadian International Trade Tribunal (the Tribunal). Prior to her appointment to the Tribunal in 1997, she was Director of the Tariffs Division at the Department of Finance. Ms. Close also held various senior positions with the departments of Industry, Natural Resources and Finance and, on executive exchanges, with the Bank of Montreal and Petro-Canada.

On September 19, 2000, Mr. Richard Lafontaine was appointed Vice-Chairperson of the Tribunal. Mr. Lafontaine was originally appointed to the position of Member of the Tribunal in 1998. Prior to his appointment, he was Chair of the Standards Council of Canada. He also held senior positions with Warnock Hersey Professional Services Ltd., Lavallin and its successor, SNC-Lavallin, and Inchcape Testing Services.

On November 10, 2000, Mr. Peter F. Thalheimer was reappointed to the position of Member of the Tribunal. Prior to his appointment in 1997, he owned a private law practice in Timmins, Ontario, for the period from 1964 to 1993. Mr. Thalheimer was elected to the House of Commons in 1993, representing the riding of Timmins-Chapleau, and served as Vice-Chair of the Standing Committee on Natural Resources.

On February 19, 2001, Ms. Ellen Fry was appointed to the position of Member of the Tribunal. Prior to her appointment, she was General Counsel at the Department of Justice, Client Driven Services Secretariat. Ms. Fry previously held the position of General Counsel at the Department of Industry and the Department of Transport and subsequently at the Department of the Environment where she managed legal work on trade issues. Ms. Fry also had experience working in a private law firm.

During the fiscal year, Mr. Raynald Guay resigned as Vice-Chairperson of the Tribunal and the term of Mr. Arthur B. Trudeau as temporary Member of the Tribunal expired. The Tribunal takes this opportunity to recognize these Members' valuable contribution to the Tribunal's work.

Senior Staff

On January 26, 2001, Mr. Gerry Stobo resigned as General Counsel of the Tribunal to pursue his career in a private law firm. The Tribunal would like to

**Legislative
Amendments to
the Special Import
Measures Act and
the Canadian
International
Trade Tribunal Act**

take this opportunity to recognize Mr. Stobo's significant contribution to the Tribunal's work and the quasi-judicial community. He was instrumental in developing, in conjunction with the Canadian Centre for Management Development, a training program for members who are newly appointed to federal boards and tribunals. He was also involved in initiatives relating to ethics and values in the quasi-judicial environment. Finally, Mr. Stobo was actively involved in the activities of the Canadian Bar Association and was elected first President of the Canadian Bar Association's Public Sector Lawyers' Conference whose objective is to promote a forum for public sector lawyers whose interests are different from those of lawyers in private practice.

Legislative amendments to the *Special Import Measures Act* (SIMA) and the *Canadian International Trade Tribunal Act* (CITT Act) came into force on April 15, 2000, bringing changes to the jurisdiction, procedures and processes of the Tribunal.

In order to familiarize stakeholders with those changes, the Tribunal issued a series of interim guidelines dealing with preliminary injury inquiries, public interest inquiries, interim reviews and expiry reviews. These documents are available on the Tribunal's Web site (www.citt.gc.ca).

**Dumping and
Subsidizing
Inquiries and
Reviews**

In the fiscal year, the Tribunal issued five preliminary determinations of injury under subsection 37.1(1) of SIMA. One preliminary injury inquiry was terminated, and one was still in progress at the end of the year. The Tribunal also issued six findings following injury inquiries under section 42 of SIMA and four orders following reviews under section 76. One injury inquiry was suspended as a result of the acceptance by the Commissioner of the Canada Customs and Revenue Agency (CCRA) of an undertaking offered by the exporter of the subject goods. At the end of the year, there were three inquiries and two reviews in progress.

**Public Interest
Investigations**

On May 1, 2000, the Tribunal, under subsection 43(1) of SIMA, found that the dumping in Canada of iodinated contrast media used for radiographic imaging, originating in or exported from the United States (including the Commonwealth of Puerto Rico) (NQ-99-003) had caused material injury to the domestic industry. Having received representations on the question of public interest, the Tribunal decided to initiate a public interest investigation under section 45 of SIMA. On August 29, 2000, the Tribunal issued its report to the Minister of Finance recommending a reduction in the anti-dumping duties on certain iodinated contrast media from the United States (including the Commonwealth of Puerto Rico).

**Trade and Tariff
Reference**

On August 1, 2000, the Tribunal, under subsection 43(1) of SIMA, found that the dumping in Canada of certain refrigerators, dishwashers and dryers originating in or exported from the United States (NQ-2000-001) had caused material injury to the domestic industry. Having received representations on the question of public interest, the Tribunal determined that there was no public interest issue that warranted further investigation under section 45 of SIMA.

Textiles

During the fiscal year, the Tribunal issued eight reports to the Minister of Finance concerning requests for tariff relief. Four requests for tariff relief were in progress at the end of the year. In addition, the Tribunal's sixth annual status report on the investigation process was submitted to the Minister of Finance on January 31, 2001.

Appeals

The Tribunal issued decisions on 58 appeals from decisions of the Department of National Revenue and the CCRA made under the *Customs Act* and the *Excise Tax Act*.

**Procurement
Review**

The Tribunal received 78 complaints during the fiscal year. The Tribunal issued 28 written determinations of its findings and recommendations. Nine of these determinations related to cases that were in progress at the end of fiscal year 1999-2000. In 13 of the 28 written determinations, the complaints were determined to be valid or valid in part.

In July 1999, the governments of the Republic of Korea and Canada signed the *Agreement on the Procurement of Telecommunications Equipment* establishing rules and procedures with respect to government procurement of telecommunications equipment and incidental services by manufacturers and service providers of both countries. The agreement also provides for the application of non-discriminatory rules with respect to the procurement of telecommunications equipment by listed government entities. Under the terms of the agreement, the federal government is required to adopt and maintain bid protest procedures for procurement that it covers.

Given that the Tribunal is the bid challenge authority for procurement complaints under the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (AIT) and the *Agreement on Government Procurement* (AGP), the federal government has determined that the Tribunal would be Canada's bid challenge authority in respect of the *Agreement on the*

Rules of Procedure

Procurement of Telecommunications Equipment. The *Canadian International Trade Tribunal Procurement Inquiry Regulations* were therefore amended. These amendments came into force on November 1, 2000.

The revised *Canadian International Trade Tribunal Rules* (Rules of Procedure) came into force on April 15, 2000. They eliminate unnecessary rules, increase efficiency and transparency and preserve fairness. Procedures have also been modified to reflect technological changes. The revised Rules of Procedure also incorporate new rules to accommodate legislative amendments to SIMA and the CITT Act that came into effect on April 15, 2000. An unofficial version of the Rules of Procedure is available on the Tribunal's Web site.

Access to Tribunal Notices, Decisions and Publications

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

The Tribunal's Web site provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as other information relating to the Tribunal's current activities. The Tribunal also launched a new subscriber alert service. This new service gives a subscriber the flexibility to choose those areas of the Tribunal's jurisdiction for which it wants to be notified of each new posting on the Tribunal's Web site. It also allows subscribers to register and deregister on-line. This service is available free of charge.

Meeting Statutory Deadlines (Timeliness)

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

Tribunal's Caseload in Fiscal Year

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated/ Terminated/ Suspended	Cases Outstanding (March 31, 2001)
SIMA ACTIVITIES						
Preliminary Injury Inquiries	-	7	7	5	1	1
Inquiries	2	8	10	6	1	3
Public Interest Inquiries	-	2	2	2	-	-
Requests for Interim Review	-	2	2	2	-	-
Expiries ¹	-	3	3	2	1	-
Expiry Reviews	4	2	6	4	-	2
APPEALS						
<i>Customs Act</i>	113	30	143	36	28	79
<i>Excise Tax Act</i>	136	27	163	22	52	89
SIMA	<u>1</u>	<u>3</u>	<u>4</u>		<u>2</u>	<u>2</u>
Total	250	60	310	58	82	170
ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES						
Textile Reference						
Requests for Tariff Relief	5	8	13	8	1	4
Expiries ¹	-	-	-	-	-	-
Reviews	-	-	-	-	-	-
Requests for Reconsideration		1	1	1	-	-
Economic, Trade and Tariff-related Matters	-	-	-	-	-	-
PROCUREMENT REVIEW ACTIVITIES						
Complaints	9	78	87	28	37	22

1. As a result of a different method of reporting expiries, expiries for which decisions had not been made prior to the end of the previous fiscal year are detailed in column one. The fourth column refers to decisions to review.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

Introduction

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

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

Mandate

The Tribunal's primary mandate is to:

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

Method of Operation

In carrying out most of its responsibilities, the Tribunal conducts inquiries with hearings that are open to the public. These are normally held at the Tribunal's offices in Ottawa, Ontario, although hearings may also be held elsewhere in Canada, in person or through videoconferencing. 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, generally conducted by a panel of three members, should be carried out as “informally and expeditiously” as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information. The CITT Act contains provisions for the protection of confidential information. Only independent counsel who have filed declarations and confidentiality undertakings may have access to confidential information.

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

Membership

The Tribunal may be composed of nine full-time members, including a Chairperson and two Vice-Chairpersons, who are appointed by the Governor in Council for a term of up to five years that is renewable once. A maximum of five additional members may be temporarily appointed. The Chairperson 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 seven, are supported by a permanent staff of 86 people. Its principal officers are the Secretary, responsible for corporate management, public relations, dealings with other government departments and other governments, and the court registry functions of the Tribunal; the Executive Director, Research, responsible for the investigative portion of inquiries, for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; and the General Counsel, responsible for the provision of legal services.

Consultations

Through the Tribunal/Canadian Bar Association Bench and Bar Committee, the Tribunal provides a forum to promote discussion with the bar on issues of importance. The committee also includes representatives from the trade consulting community. The Tribunal consults with the bar, representatives of industries and others that appear or are likely to appear before the Tribunal to exchange views on new procedures being considered by the Tribunal prior to their distribution as guidelines or practice notices. The Tribunal also briefs federal government departments and trade associations on its procedures.

Organization

CHAIRPERSON

Pierre Gosselin

VICE-CHAIRPERSONS

Raynald Guay*
Patricia M. Close
Richard Lafontaine

MEMBERS

Peter F. Thalheimer
Zdenek Kvarda
James A. Ogilvy
Arthur B. Trudeau**
Ellen Fry

SECRETARIAT

Secretary
Michel P. Granger

RESEARCH BRANCH

Executive Director of Research
Ronald W. Erdmann

LEGAL SERVICES BRANCH

General Counsel
Gerry Stobo*

* Resigned during the fiscal year

** Temporary Member whose term expired during the fiscal year

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	Safeguard Measures
30.11	Complaints by Potential Suppliers in Respect of Designated Contracts
SIMA	
33 and 37	Advice to Commissioner
34, 35 and 36	Preliminary Inquiry
37.1	Preliminary Determination of Injury
42	Inquiries With Respect to Injury Caused by the Dumping and Subsidizing of Goods
43	Findings of the Tribunal Concerning Injury
44	Recommencement of Inquiry (on Remand from the Federal Court of Canada or a Binational Panel)
45	Public Interest
46	Advice to the Commissioner
61	Appeals of Redeterminations of the Commissioner Made Pursuant to Section 59 Concerning Whether Imported Goods Are Goods of the Same Description as Goods to Which a Tribunal Finding Applies, Normal Values and Export Prices or Subsidies
76	Reviews of Findings of Injury Initiated by the Tribunal or at the Request of the Commissioner or Other Interested Persons

Legislative Mandate of the Tribunal (cont'd)

Section	Authority
76.01	Interim Reviews of Orders by Tribunal
76.02	Reviews of Orders by Tribunal on Referral Back and Re-hearing
76.03	Expiry Reviews
76.1	Reviews of Findings of Injury Initiated at the Request of the Minister of Finance
89	Rulings on Who Is the Importer
Customs Act	
67	Appeals of Decisions of the Commissioner Concerning Value for Duty and Origin and Classification of Imported Goods
68	Appeals to the Federal Court of Canada
70	References of the Commissioner Relating to the Tariff Classification or Value for Duty of Goods
Excise Tax Act	
81.19, 81.21, 81.22, 81.23, 81.25 and 81.33	Appeals of Assessments and Determinations of the Minister of National Revenue
81.32	Requests for Extension of Time for Objection or Appeal
Softwood Lumber Products Export Charge Act	
18	Appeals of Assessments and Determinations of the Minister of National Revenue
Energy Administration Act	
13	Declarations Concerning the Amount of Oil Export Charge

CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

The Process

Under SIMA, the CCRA may impose anti-dumping and countervailing duties when domestic producers are injured by imports of goods into Canada:

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

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

Preliminary Injury Inquiries

A Canadian producer or an association of Canadian producers begins the process of seeking relief from alleged injurious dumping or subsidizing by making a complaint to the Commissioner of the CCRA. If the Commissioner initiates a dumping or subsidizing investigation, the Tribunal initiates a preliminary injury inquiry under subsection 34(2) of SIMA. The Tribunal seeks to make all interested parties aware of the inquiry. It issues a notice of commencement of preliminary injury inquiry that is published in the *Canada Gazette* and forwarded to all known interested persons.

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

If the Tribunal finds that there is a reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, it makes a determination to that effect, and the Commissioner continues the dumping or subsidizing investigation. If there is no reasonable indication that the

**Preliminary Injury
Inquiries
Completed in the
Fiscal Year**

dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, the Tribunal terminates the inquiry, and the Commissioner terminates the dumping or subsidizing investigation. The Tribunal issues reasons 15 days after its determination.

The Tribunal completed five preliminary injury inquiries in the fiscal year. They concerned *Certain Grain Corn* (PI-2000-001), *Garlic* (PI-2000-002), *Certain Concrete Reinforcing Bar* (PI-2000-003), *Certain Corrosion-resistant Steel Sheet* (PI-2000-005) and *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (PI-2000-006). The Tribunal terminated its inquiry with respect to *Pulp-dewatering Screw Presses* (PI-2000-004) after the Commissioner terminated his dumping investigation. One preliminary injury inquiry was still in progress at the end of the fiscal year.

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

**Advice Given
Under Section 37
of SIMA**

When the Commissioner decides not to initiate a dumping or subsidizing investigation because there is no reasonable indication of injury, the Commissioner or the complainant may, under section 33 of SIMA, refer the matter to the Tribunal for an opinion as to whether or not the evidence before the Commissioner discloses a reasonable indication that the dumping or subsidizing has caused material injury or retardation or is threatening to cause material injury to a domestic industry.

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

There were no references under section 33 of SIMA during the fiscal year.

**Final Injury
Inquiries**

If the Commissioner makes a preliminary determination of dumping or subsidizing, the Tribunal commences a final injury inquiry under section 42 of SIMA. The CCRA may levy provisional duties on imports from the date of the preliminary determination. The Commissioner continues his investigation to a final determination of dumping or subsidizing.

As in a preliminary injury inquiry, the Tribunal seeks to make all interested parties aware of its inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties.

In conducting final injury inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. The Tribunal's staff carries out extensive research for each inquiry. The Tribunal sends questionnaires to domestic manufacturers, importers and purchasers and to foreign producers. Based primarily on questionnaire responses, the Tribunal's staff prepares a report that focuses on the factors that the Tribunal considers in arriving at decisions regarding material injury or retardation or threat of material injury to a domestic industry. The reports become part of the case record and are made available to counsel and parties.

Parties participating in the proceedings may conduct their own cases or be represented by counsel. Confidential or business-sensitive information is protected in accordance with provisions of the CITT Act.

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

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

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

**Final Injury
Inquiries
Completed in the
Fiscal Year**

The Tribunal completed six final injury inquiries in the fiscal year. They concerned *Iodinated Contrast Media* (NQ-99-003), *Certain Carbon Steel Plate* (NQ-99-004), *Certain Refrigerators, Dishwashers and Dryers* (NQ-2000-001), *Certain Stainless Steel Round Bar* (NQ-2000-002), *Waterproof Footwear and Bottoms* (NQ-2000-004) and *Certain Grain Corn* (NQ-2000-005). In 1999, the estimated values of the Canadian markets were \$20 million for iodinated contrast media, \$520 million for carbon steel plate, \$280 million, \$175 million and \$160 million, respectively, for refrigerators, dishwashers and dryers, \$30 million for stainless steel round bar and \$100 million for waterproof footwear. The western Canadian regional market for grain corn in 1999 was estimated to be \$75 million.

The Tribunal suspended its inquiry in *Bingo Paper* (NQ-2000-003) following the acceptance of an undertaking by the Commissioner.

***Iodinated Contrast
Media***

NQ-99-003

*Finding:
Injury
(May 1, 2000)*

This inquiry involved dumped imports from the United States. The sole domestic producer was Mallinckrodt Canada Inc. (MCI), a wholly owned subsidiary of Mallinckrodt Inc. Iodinated contrast media is a medical imaging agent used in X-ray diagnostic procedures.

The Tribunal concluded that dumped imports had caused injury to MCI in the form of eroded prices and that the injury was material. The evidence showed aggressive price offers for dumped imports at several accounts and the loss of a major account by MCI. While recognizing that other factors contributed to the price declines in the Canadian market, such as the purchasing power of buying groups, healthcare budget constraints, product cycles and the phasing out of patent protection, the Tribunal was of the view that the magnitude of the price erosion could only be attributed to the dumping.

In response to a submission that MCI had led prices down, the Tribunal was of the view that importers could compete with the domestic industry's prices, but only up to a point where the product was offered at dumped prices, which caused injury to the domestic industry. With respect to the fact that the vast majority of MCI's production was exported, the Tribunal found that the industry had benefited from its export performance because, by distributing the fixed costs on a larger volume, it helped offset the injurious effects of dumping in the domestic market.

**Certain Carbon Steel
Plate**

NQ-99-004

*Finding:
Injury
(June 27, 2000)*

This inquiry concerned dumped imports from Brazil, Finland and Ukraine, and dumped and subsidized imports from India, Indonesia and Thailand. There were three domestic producers of carbon steel plate: Algoma Steel Inc., Stelco Inc. (Stelco) and IPSCO Inc. (IPSCO). Several exporters from Brazil, Ukraine, India and Indonesia participated in the inquiry.

The Tribunal found that sales of the dumped and subsidized subject carbon steel plate at prices substantially below the domestic producers' and non-subject countries' selling prices had caused material injury to the domestic industry. The Tribunal was of the view that the subject imports gained significant sales volume and market share in 1998 and 1999 at the expense of the domestic producers. In an effort to regain sales volume and market share that were lost in late 1998 and in 1999, the domestic producers continued to reduce transaction prices in order to meet the lower prices of the subject imports. Together, the price erosion and the loss in sales volume and market share resulted in a deterioration of the domestic producers' financial performance.

Exporters of carbon steel plate argued that other factors had caused injury to the domestic producers. These factors included supply constraints within the domestic industry, efficiency enhancements by domestic producers that drove prices down, increased costs and financial expenses unrelated to plate production, intra-industry competition and the impact of U.S. pricing on the Canadian market. The Tribunal reviewed the effects of these other factors to ensure that it did not attribute to the subject goods any injury caused by these other factors.

**Certain Refrigerators,
Dishwashers and
Dryers**

NQ-2000-001

*Finding:
Injury
(August 1, 2000)*

This inquiry concerned dumped imports of three kinds of household appliances, refrigerators, dishwashers and dryers, manufactured by White Consolidated Industries, Inc. (WCI) and Whirlpool Corporation (Whirlpool) of the United States. The sole domestic producer was Camco Inc. (Camco). Several exporters, importers, distributors and retailers of household appliances and the Commissioner of Competition participated in the inquiry.

The Tribunal found that dumped imports had caused material injury to Camco's production of refrigerators, dishwashers and dryers. In the Tribunal's view, the dumped imports forced Camco to meet the low prices of the dumped imports or to lose sales. In this regard, the Tribunal considered that price was a central factor in the purchaser's decision to buy a specific line of appliances and that the extent of the dumping afforded imports a great deal of room to acquire or maintain market share. The evidence showed that Camco experienced a significant loss of market share as a direct result of the increased sales of imports at dumped prices. In addition, the Tribunal found that Camco experienced price suppression and, to a lesser extent, price erosion. The Tribunal found that the magnitude of Camco's market share declines in each of the product markets,

especially during a period of market growth, was material and constituted injury to the production of like goods by the domestic industry.

While much of the injury occurred in the builder and authorized builder-distributor (ABD) market segment, the Tribunal also found that Camco experienced a significant loss of market share in the retail segment of the market. The Tribunal also found that Camco's gross margins for refrigerators, dishwashers and dryers declined significantly. The Tribunal was convinced that these decreases in gross margins were related, to a significant degree, to the large and increasing competition with dumped imports.

In considering factors other than dumping that might have caused injury to Camco, the Tribunal noted that there were almost always other factors present. It also stated that the dumping need not be the only or principal cause of the injury, but that the injury caused by the dumping must be shown to be material. The Tribunal was not convinced that the other factors that it examined could explain the large loss of market share for refrigerators, dishwashers and dryers. The factors included Camco's selling and marketing practices, business strategies and decisions, selling policies in the builder and ABD markets, product quality, the adequacy of Camco's investment and rationalization of production, export sales and the impact of imports of non-subject appliances and Camco's lack of success at the Sears account.

The Tribunal excluded from its findings refrigerators with a capacity of 18.5 cubic feet and above, dishwashers with stainless steel tubs, gas or electric dryers with controls at the front, removable tops and chassis designed to be stacked on top of washers, and refrigerators, dishwashers and dryers destined for use in the Habitat for Humanity Program.

***Certain Stainless
Steel Round Bar***

NQ-2000-002

*Finding:
Injury
(October 27, 2000)*

This inquiry involved dumped and subsidized imports from Brazil and subsidized imports from India. Atlas Specialty Steels (Atlas) was the sole domestic producer of stainless steel bar. An exporter and an importer also participated in the inquiry.

After determining that the acquisition of Atlas by Slater Steel Inc. (Slater) during the inquiry had no bearing on what constitutes the domestic industry, the Tribunal concluded that Atlas had suffered a significant deterioration in performance in the form of lost sales volumes and market share, price erosion and suppression, and reduced revenue and profitability. Moreover, the injury suffered by Atlas as a result of imports of the subject goods was clearly material. The evidence showed that imports of stainless steel bar from the subject countries increased steadily and replaced imports from the countries, other than India, subject to two previous findings in Inquiry Nos. NQ-98-001 and NQ-98-003. As

**Waterproof Footwear
and Bottoms**

NQ-2000-004

*Finding:
Threat of Injury
(December 8, 2000)*

a consequence, in 1999, Atlas's sales of stainless steel bar declined sharply, and it lost significant market share. Despite a strong market in the first half of 2000, Atlas could not increase its market share.

The Tribunal also found that Atlas's large loss in market share, along with eroded prices through 1999, had a direct impact on its financial performance. The deterioration of Atlas's financial performance in 1999 and the lack of any significant improvement in the first quarter of 2000 occurred despite the previous injury findings. Moreover, the Tribunal was not convinced that any of the other factors examined had contributed to the injury caused by the subject imports.

This inquiry involved dumped imports from China. The domestic industry consisted of 10 known producers, 5 of which were members of The Shoe Manufacturers' Association of Canada and accounted for about 99 percent of the total domestic production of waterproof footwear and bottoms. Several importers, as well as the Retail Council of Canada, participated in the inquiry.

Although dumped imports from China had increased substantially, albeit from low levels, in the period leading up to the preliminary determination, the Tribunal was not convinced that they had caused injury to the domestic industry. A decline in the market for waterproof footwear, as a result of warmer climatic conditions, had a significant negative effect on the domestic industry's performance. Milder weather also led to a change in demand towards lighter boots, while the focus of the industry's production had been on the more traditional type of winter boots. Approximately two thirds of the subject imports consisted of flocked waterproof footwear, a product that satisfied consumer demand for lighter-weight waterproof footwear with a fashion flair. Another product that was imported from China was women's fully waterproof nylon boots with non-boat-like construction bottoms that also met similar consumer demands. There were no comparable products manufactured by the domestic industry. In addition, while there was some evidence that other dumped imports had a negative impact on the domestic industry, the Tribunal was of the view that the injury was not material.

However, the Tribunal considered that the acquisition of the Sorel brand name by Columbia Sportswear Company (Columbia) from a major Canadian producer, Kaufman Footwear, Division of William H. Kaufman Inc., that declared bankruptcy soon after the preliminary determination, could have serious consequences for the domestic industry. In fact, the evidence disclosed a real possibility that Columbia could supply the Canadian market with Sorel footwear produced in China and offered in Canada at dumped prices. This could quickly destabilize prices in the traditional Canadian winter boot market, which had been the mainstay of the Canadian industry. This, together with China's huge

Certain Grain Corn

NQ-2000-005

*Finding:
No Injury
(March 7, 2001)*

production capacity, strong export orientation and history of dumping, led the Tribunal to conclude that the domestic industry would face a threat of material injury from dumped imports from China. The Tribunal excluded from its finding flocked waterproof footwear and women's fully waterproof nylon boots with non-boat-like construction bottoms.

This inquiry involved dumped and subsidized imports from the United States into Canada for use or consumption west of the Manitoba-Ontario border. The producers represented by the Manitoba Corn Growers Association Inc. accounted for about 92 percent of the western Canadian production of grain corn. Several importers and users of grain corn also participated in the inquiry.

The Tribunal noted that the injury standard for a regional market is very stringent. The evidence must disclose that the subject goods have injured the producers of "all or almost all" grain corn production in Western Canada.

In this regard, the Tribunal found that dumped and subsidized imports from the United States had caused the prices of corn sold in Western Canada to decline, causing financial injury to many domestic producers. However, the Tribunal also found that there was a certain proportion of commercial production that had not been materially injured. Evidence showed that some producers were able to achieve better than average prices for their corn despite the presence of dumped and subsidized imports from the United States. In addition, certain major corn users pay a higher-than-average price for domestic corn because it has certain qualities or characteristics that they require for their operations. It was apparent that some producers were able to achieve reasonable rates of return, even in the 1999-2000 crop year when U.S. import prices were at their lowest levels.

In addition, the Tribunal identified another category of corn grower that was not affected by dumped and subsidized imports in the same way as producers that operate in the commercial market. The Tribunal noted that diversified farmers who have livestock operations and who also grow their own corn for feed are able to achieve certain synergies between their animal and grain operations. The evidence showed that they have costs of production that are much lower than the industry average. On-farm users are also effectively insulated from most market price fluctuations. This price protection, combined with their lower-than-average costs of production, puts them on quite a different footing from commercial corn growers as far as the effects of dumped and subsidized imports are concerned. Moreover, corn grown for on-farm feed use was a significant and growing part of the western Canadian corn-growing industry, comprising as much as 30 percent of total production according to some estimates.

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

Thus, while many domestic producers that sold their corn on the commercial market had been injured by the subject imports, when the non-injured production represented by on-farm use was combined with the portion of commercial sales that had achieved reasonable returns, there was little doubt that the “all or almost all” injury threshold had not been met in this case.

There were three inquiries in progress at the end of the fiscal year: *Garlic, Fresh or Frozen* (NQ-2000-006), *Certain Concrete Reinforcing Bar* (NQ-2000-007) and *Certain Corrosion-resistant Steel Sheet* (NQ-2000-008).

The inquiry on garlic concerns dumped imports from China and Vietnam. There are over 100 producers of garlic, most of whom are represented by the Garlic Growers Association of Ontario.

The inquiry on concrete reinforcing bar concerns dumped imports from Indonesia, Japan, Latvia, Moldova, Poland, Chinese Taipei and Ukraine. The Canadian producers of concrete reinforcing bar are Stelco, Co-Steel Inc., Gerdau Courtice, Gerdau MRM Steel, Ispat Sidbec Inc. (Ispat Sidbec) and Slater. Two exporters are parties to the inquiry.

The inquiry on corrosion-resistant steel sheet concerns dumped imports from China, Malaysia, the Russian Federation, South Africa and Chinese Taipei, and dumped and subsidized imports from India. The Canadian producers of corrosion-resistant steel sheet are Dofasco Inc., Stelco, Sorevco and Continuous Colour Coat Limited. Several importers, exporters and the government of an exporting country are parties to the inquiry.

Table 2 summarizes the Tribunal’s final injury inquiry activities during the fiscal year.

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

The Tribunal may initiate a public interest inquiry following a finding of injury caused by dumped or subsidized imports. The Tribunal may decide, either as a result of a request from an interested person or on its own initiative, that there are reasonable grounds to consider that the imposition of part or all of the duties may not be in the public interest. The Tribunal then conducts a public interest inquiry pursuant to section 45 of SIMA. The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by how much. The Tribunal received two requests for a public interest inquiry during the fiscal year.

After the Tribunal’s finding of injury in *Iodinated Contrast Media* (NQ-99-003), several interested persons, including medical associations, public

health advocates, radiologist associations, hospitals, buying groups, importers and the Commissioner of Competition, made representations that the Tribunal should initiate a public interest investigation. MCI, the sole domestic producer, opposed an investigation. After considering these representations, the Tribunal was of the view that a number of factors existed which, taken together, demonstrated a public interest concern worthy of further investigation. The Tribunal commenced a public interest investigation (PB-2000-001) on June 15, 2000.

The Tribunal's investigation included a public hearing, where it heard testimony from witnesses representing the parties that had expressed an interest in the matter. After the investigation, the Tribunal reported to the Minister of Finance that it was of the opinion that the imposition of the anti-dumping duties in the full amount on contrast media was not in the public interest. The report, filed on August 29, 2000, included a recommendation for the reduction of the duties and a description of how the recommendation should be implemented.

The Tribunal determined that a reduction of the anti-dumping duties would address the concern that a large increase in prices of contrast media would lead to pressures on hospital budgets, which would result in a reduction of the number of procedures that could be undertaken on patients. A reduction of the duties would also enable both Nycomed Amersham Canada Ltd. and Bracco Diagnostics Canada Inc. to continue to be an alternative to MCI for buyers of contrast media, thus addressing the public interest concern that radiologists require a choice of products in order to provide the greatest safety and comfort for patients. On the other hand, a price for imported contrast media that would be somewhat higher than during the injury inquiry period would maintain a level of protection from injurious dumping for the domestic industry and provide scope for MCI to increase its revenues.

The Tribunal determined a "public interest price" for contrast media that would balance the various public interests. Although this public interest price was higher than recent market prices, it was much less than the estimated full duty-paid price. The effect of the implementation of the Tribunal's recommendation would be the reduction of normal values by more than 60 percent. The recommendation was based on the CCRA's existing method of anti-dumping enforcement and duty collection.

On August 29, 2000, the Tribunal received requests from several appliance retailers, importers and exporters and an environmental group for a public interest inquiry to eliminate or reduce the anti-dumping duties applied as a result of the Tribunal's injury findings in *Certain Refrigerators, Dishwashers and Dryers* (NQ-2000-001). On September 12, 2000, the domestic producer and an importer made submissions opposing a public interest inquiry.

Importer Ruling

On October 3, 2000, in its consideration (PB-2000-002), the Tribunal concluded that it was not convinced that there was a public interest that warranted further investigation. Although price increases normally occur after the removal of injurious dumping, price competition in the Canadian market continued to be strong among a number of suppliers of appliances, including WCI and Whirlpool. The weighted average margins of dumping were relatively low, and consumers continued to have access to a full range of products. For the Tribunal to initiate a public interest investigation, it must see clear and compelling evidence of effects or potential effects that extend beyond the commercial interests of industry players into the broader public domain.

Under section 90 of SIMA, the Commissioner may request the Tribunal to rule on the question as to which of two or more persons is the importer of goods on which anti-dumping or countervailing duties are payable. If the Tribunal identifies as the importer a person other than the one specified by the Commissioner, the Tribunal may reconsider its original finding of material injury under section 91.

There were no requests for importer rulings in the fiscal year.

Requests for an Interim Review

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Minister of Finance, the Commissioner or any other person or government (section 76.01 of SIMA). The Tribunal commences an interim review where one is warranted and determines if the finding or order (or any aspect of it) should be rescinded or continued to its expiry date, with or without amendment.

An interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a sufficient change in the circumstances that led to the finding or order. For example, since the finding or order, the domestic industry may have ceased production of like goods or foreign subsidies may have been terminated. An interim review may also be warranted where there are sufficient facts that, although in existence, were not put into evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time.

There were two requests for interim reviews of two findings in the fiscal year.

On February 15, 2000, the Garlic Growers Association of Ontario requested a review of the Tribunal's finding in *Fresh Garlic* (NQ-96-002) to extend the coverage of the finding to a full calendar year, from the period of July 1 to December 31 during which the finding now applies. On June 27, 2000, the

Expiry Reviews

Tribunal decided that, because it did not have the jurisdiction to expand the scope of the finding, an interim review was not warranted (RD-99-002).

On April 15, 2000, Shaw Industries, Inc. (Shaw) filed a request for an interim review of the Tribunal's order in *Machine Tufted Carpeting* (RR-96-004). Shaw was seeking an exclusion for certain carpeting manufactured using the patented Zimmer Chromojet jet dye technology. On August 20, 2000, the Tribunal decided that a review of the order was not warranted (RD-2000-001). The Tribunal found that future domestic production was imminent and well documented and that there was no likelihood of an amendment to the order if an interim review were conducted.

Subsection 76.03(1) of SIMA provides that a finding or order expires after five years, unless an expiry review has been initiated. Not later than 10 months before the expiry date of the order or finding, the Secretary publishes a notice of expiry in the *Canada Gazette*. The notice invites persons and governments to submit their views on whether the order or finding should be reviewed and gives direction on the issues that should be addressed in the submissions. The Tribunal initiates a review of the order or finding, as requested, if it determines that such a review is warranted. It then issues a notice of review and notifies the Commissioner of its decision. The notice of expiry review is published in the *Canada Gazette* and forwarded to all known interested parties.

During the fiscal year, the Tribunal issued three notices of expiry. The Tribunal decided that expiry reviews were warranted in two cases and initiated reviews. In *Certain Stainless Steel Welded Pipe* (LE-2000-03), there was no request for the initiation of an expiry review.

The purpose of an expiry review is to determine whether anti-dumping or countervailing duties remain necessary. There are two phases in an expiry review. The first phase is the investigation by the Commissioner to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the finding or order expires. If the Commissioner determines that such a likelihood exists with respect to any of the goods, the second phase is the Tribunal's inquiry into the likelihood of injury or retardation. If the Commissioner determines that such a likelihood does not exist for any of the goods, the Tribunal does not consider those goods in its subsequent determination of the likelihood of injury and issues an order rescinding the order or finding with respect to those goods.

The Tribunal's procedures in expiry reviews are similar to those in final injury inquiries.

Expiry Reviews Completed in the Fiscal Year

Upon completion of an expiry review, the Tribunal issues an order with reasons, rescinding or continuing a finding or order, with or without amendment. If the Tribunal continues a finding or order, it remains in force for a further five years, unless a review has been initiated and the finding or order is rescinded. If the finding or order is rescinded, imports are no longer subject to anti-dumping or countervailing duties.

In the fiscal year, the Tribunal completed four expiry reviews.

On May 1, 2000, the Tribunal continued its order in *Women's Boots and Women's Shoes* (RR-99-003) respecting dumped imports from China, with an amendment to rescind the portion respecting women's shoes. The Shoe Manufacturers' Association of Canada, representing domestic producers, importers and the Retail Council of Canada participated in the expiry review.

On June 5, 2000, the Tribunal continued its order in *Certain Carbon Steel Welded Pipe* (RR-99-004) respecting dumped imports from Korea. Stelco, IPSCO, Ispat Sidbec and an importer participated in the expiry review.

On September 13, 2000, the Tribunal continued its order in *Whole Potatoes* (RR-99-005) respecting dumped imports into British Columbia from the United States. The B.C. Vegetable Marketing Commission, representing growers, and the Washington State Potato Commission, representing exporters, participated in the expiry review.

On November 3, 2000, the Tribunal continued its orders in *Refined Sugar* (RR-99-006) respecting dumped imports from Denmark, Germany, the Netherlands, the United Kingdom and the United States and subsidized imports from the European Union. The Tribunal made generic certain brand-, producer- or importer-specific exclusions granted in the initial inquiry, and its orders excluded one additional product. The Canadian Sugar Institute, representing domestic producers, the Canadian Sugar Beet Producers' Association Inc., the Canadian Sugar Users Coalition, several food manufacturers and importers, the Commissioner of Competition and the United States Beet Sugar Association participated in the expiry review.

Expiry Reviews in Progress at the End of the Fiscal Year

Two expiry reviews were in progress at the end of the fiscal year. They were reviews of the orders in: (1) *Certain Oil and Gas Well Casing* (RR-2000-001) respecting dumped imports from Korea and the United States; and (2) *Carbon Steel Welded Pipe* (RR-2000-002) respecting dumped imports from Argentina, India, Romania, Chinese Taipei, Thailand, Venezuela and Brazil.

**Judicial or Panel
Review of SIMA
Decisions**

Table 3 summarizes the Tribunal's expiry review activities during the fiscal year. Table 4 lists Tribunal findings and orders in force as of March 31, 2001.

Any person affected by Tribunal findings or orders can request judicial review by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law. In cases involving goods from the United States and Mexico, requests may be made for judicial review by the Federal Court of Canada or for a review by a NAFTA binational panel. Table 5 lists the Tribunal's decisions under section 43, 44 or 76 of SIMA that were before the Federal Court of Canada for judicial review or for review by a binational panel in the fiscal year.

During the fiscal year, the Federal Court of Canada affirmed the Tribunal's orders in *Certain Corrosion-resistant Steel Sheet* (RR-98-007). Requests to the Federal Court of Canada for judicial review in *Certain Cold-rolled Steel Sheet* (RR-97-007) were discontinued. At the end of the fiscal year, the Federal Court of Canada had not yet heard applications to review the Tribunal's orders in *Refined Sugar* (RR-99-006).

During the fiscal year, binational panels affirmed the Tribunal's order (United States) in *Certain Copper Pipe Fittings* (RR-97-008) and its order (United States) in *Certain Cold-rolled Steel Sheet* (RR-97-007). At the end of the fiscal year, the proceeding relating to the application to review the Tribunal's finding (United States) in *Iodinated Contrast Media* (NQ-99-003) had been suspended, and a binational panel had not yet heard an application to review the Tribunal's finding (Mexico) in *Carbon Steel Plate* (NQ-97-001) and its findings (United States) in *Certain Refrigerators, Dishwashers and Dryers* (NQ-2000-001).

**WTO Dispute
Resolution**

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

TABLE 1**Preliminary Determinations of Injury Issued Under Subsection 37.1(1) of SIMA
Between April 1, 2000, and March 31, 2001, and Preliminary Injury Inquiries Under
Subsection 34(2) of SIMA in Progress at Year End**

Preliminary Injury Inquiry No.	Product	Country	Date of Determination	Determination
PI-2000-001	Certain Grain Corn	United States	October 10, 2000	Injury
PI-2000-002	Garlic	China and Vietnam	December 29, 2000	Injury
PI-2000-003	Certain Concrete Reinforcing Bar	Indonesia, Japan, Latvia, Moldova, Poland, Chinese Taipei and Ukraine	January 2, 2001	Injury
PI-2000-004	Pulp-dewatering Screw Presses	Norway	January 19, 2001	Inquiry terminated
PI-2000-005	Certain Corrosion-resistant Steel Sheet	China, India, Malaysia, Portugal, Russian Federation, South Africa and Chinese Taipei	February 2, 2001	Injury
PI-2000-006	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip	Brazil, Bulgaria, China, Chinese Taipei, India, Korea, former Yugoslav Republic of Macedonia, New Zealand, Saudi Arabia, South Africa, Thailand, Ukraine and Yugoslavia	March 20, 2001	Injury
PI-2000-007	Certain Cold-rolled Steel Sheet Products	Brazil, Chinese Taipei, former Yugoslav Republic of Macedonia, Italy, Luxembourg, Malaysia, China, Korea and South Africa		

TABLE 2**Findings Issued Under Section 43 of SIMA Between April 1, 2000, and March 31, 2001, and Inquiries Under Section 42 of SIMA in Progress at Year End**

Inquiry No.	Product	Country	Date of Finding/Decision	Finding/Decision
NQ-99-003	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	May 1, 2000	Injury
NQ-99-004	Certain Carbon Steel Plate	Brazil, Finland, India, Indonesia, Thailand and Ukraine	June 27, 2000	Injury
NQ-2000-001	Certain Refrigerators, Dishwashers and Dryers	United States	August 1, 2000	Injury
NQ-2000-002	Certain Stainless Steel Round Bar	Brazil and India	October 27, 2000	Injury
NQ-2000-003	Bingo Paper	United States	September 29, 2000	Inquiry suspended
NQ-2000-004	Waterproof Footwear and Bottoms	China	December 8, 2000	Threat of injury
NQ-2000-005	Certain Grain Corn	United States	March 7, 2001	No injury
NQ-2000-006	Garlic	China and Vietnam		
NQ-2000-007	Certain Concrete Reinforcing Bar	Indonesia, Japan, Latvia, Moldova, Poland, Chinese Taipei and Ukraine		
NQ-2000-008	Certain Corrosion-resistant Steel Sheet	China, India, Malaysia, Russian Federation, South Africa and Chinese Taipei		

TABLE 3**Orders Issued Under Section 76 of SIMA Between April 1, 2000, and March 31, 2001,
and Reviews in Progress at Year End**

Review No.	Product	Country	Date of Order	Order
RR-99-003	Women's Boots and Women's Shoes	China	May 1, 2000	Order continued
RR-99-004	Carbon Steel Welded Pipe	Korea	June 5, 2000	Order continued
RR-99-005	Whole Potatoes	United States	September 13, 2000	Order continued
RR-99-006	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	November 3, 2000	Finding continued
RR-2000-001	Certain Oil and Gas Well Casing	Korea and United States		
RR-2000-002	Certain Carbon Steel Welded Pipe	Argentina, India, Romania, Chinese Taipei, Thailand, Venezuela and Brazil		

TABLE 4**SIMA Findings and Orders in Force as of March 31, 2001¹**

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-95-001	July 5, 1996	Oil and Gas Well Casing	Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986) RR-90-005 (June 10, 1991)
RR-95-002	July 25, 1996	Carbon Steel Welded Pipe	Argentina, India, Romania, Chinese Taipei, Thailand, Venezuela and Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992)
RR-96-001	September 12, 1996	Stainless Steel Welded Pipe	Chinese Taipei	NQ-91-001 (September 5, 1991)
NQ-96-002	March 21, 1997	Fresh Garlic	China	
NQ-96-003	April 11, 1997	Polyiso Insulation Board	United States	
RR-96-004	April 21, 1997	Machine Tufted Carpeting	United States	NQ-91-006 (April 21, 1992)
NQ-96-004	June 27, 1997	Concrete Panels	United States	
RR-97-001	October 20, 1997	Waterproof Rubber Footwear	China	ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987) RR-92-001 (October 21, 1992)
NQ-97-001	October 27, 1997	Certain Hot-rolled Carbon Steel Plate	Mexico, China, Republic of South Africa and Russian Federation	
RR-97-002	November 28, 1997	Fresh Iceberg (Head) Lettuce	United States	NQ-92-001 (November 30, 1992)
RR-97-003	December 10, 1997	Bicycles and Frames	Chinese Taipei and China	NQ-92-002 (December 11, 1992)
NQ-97-002	April 29, 1998	Certain Prepared Baby Foods	United States	
NQ-98-001	September 4, 1998	Certain Stainless Steel Round Bar	Germany, France, India, Italy, Japan, Spain, Sweden, Chinese Taipei and United Kingdom	
RR-98-001	November 18, 1998	Preformed Fibreglass Pipe Insulation	United States	NQ-93-002 (November 19, 1993)

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-98-004	May 17, 1999	Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate	Italy, Korea, Spain and Ukraine	NQ-93-004 (May 17, 1994)
NQ-98-003	June 18, 1999	Certain Stainless Steel Round Bar	Korea	
RR-98-005	June 22, 1999	12-gauge Shotshells	Czech Republic and Republic of Hungary	NQ-93-005 (June 22, 1994)
NQ-98-004	July 2, 1999	Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products	France, Romania, Russian Federation and Slovak Republic	
RR-98-006	July 19, 1999	Black Granite Memorials and Black Granite Slabs	India	NQ-93-006 (July 20, 1994)
RR-98-007	July 28, 1999	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	NQ-93-007 (July 29, 1994)
NQ-99-001	August 27, 1999	Certain Cold-rolled Steel Sheet Products	Belgium, Russian Federation, Slovak Republic and Turkey	
NQ-99-002	January 12, 2000	Certain Concrete Reinforcing Bar	Cuba, Korea and Turkey	
RR-99-002	March 20, 2000	Subsidized Canned Ham	Denmark and Netherlands	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990) RR-94-002 (March 21, 1995)
NQ-99-003	May 1, 2000	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	
RR-99-003	May 1, 2000	Women's Boots	China	RR-94-003 (May 2, 1995) NQ-89-003 (May 3, 1990)
RR-99-004	June 5, 2000	Carbon Steel Welded Pipe	Korea	RR-94-004 (June 5, 1995) RR-89-008 (June 5, 1990) ADT-6-83 (June 28, 1983)

Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-99-004	June 27, 2000	Certain Carbon Steel Plate	Brazil, Finland, India, Indonesia, Thailand and Ukraine	
NQ-2000-001	August 1, 2000	Certain Refrigerators, Dishwashers and Dryers	United States (WCI and Whirlpool)	
RR-99-005	September 13, 2000	Whole Potatoes	United States	RR-94-007 (September 14, 1995) RR-89-010 (September 14, 1990) CIT-16-85 (April 18, 1986) ADT-4-84 (June 4, 1984)
NQ-2000-002	October 27, 2000	Certain Stainless Steel Round Bar	Brazil and India	
RR-99-006	November 3, 2000	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	NQ-95-002 (November 6, 1995)
NQ-2000-004	December 8, 2000	Waterproof Footwear and Bottoms	China	

1. To determine the precise product coverage, refer to the findings or orders as identified in the first column of the table.

TABLE 5**SIMA Cases Before the Federal Court of Canada or a Binational Panel Between April 1, 2000, and March 31, 2001**

Case No.	Product	Country of Origin	Forum	Date Filed	File No./ Status
RR-97-007	Certain Cold-rolled Steel Sheet	Germany, France, Italy, United Kingdom and United States	FC	August 27, 1998	A—483—98/ A—484—98/ A—514—98/ A—515—98 Appeals discontinued
			BP	September 1, 1998	CDA-USA-98-1904-02 Decision affirmed
RR-97-008	Certain Copper Pipe Fittings	United States	BP	November 20, 1998	CDA-USA-98-1904-03 Decision affirmed
NQ-97-001	Certain Hot-rolled Carbon Steel Plate	Mexico	BP	July 12, 1999	CDA-MEX-99-1904-01
RR-98-007	Certain Corrosion-resistant Steel Sheet Products	Brazil, Germany, Japan, Korea and United States	FC	September 2, 1999	A—236—99 Appeal dismissed
NQ-99-003	Iodinated Contrast Media	United States (including the Commonwealth of Puerto Rico)	BP	July 12, 2000	CDA-USA-2000-1904-02 Proceeding suspended
NQ-2000-001	Certain Refrigerators, Dishwashers and Dryers	United States	BP	September 22, 2000	CDA-USA-2000-1904-04
RR-99-006	Refined Sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	FC	December 1, 2000	A—746—00

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

CHAPTER IV

APPEALS

Introduction

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

The Tribunal strives to be informal and accessible. However, there are certain procedures and time constraints that are imposed by law and by the Tribunal. For example, the appeal process is set in motion with a notice (or letter) of appeal, in writing, sent to the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made.

Rules of Procedure

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

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant’s brief, the respondent must provide the Tribunal and the appellant with a brief setting forth his position. The Secretary of the Tribunal then contacts both parties in order to schedule a hearing. Hearings are generally conducted before Tribunal members in public. The Tribunal publishes a notice of the hearing in the *Canada Gazette* to allow other interested persons to attend. Depending on the complexity and precedential nature of the matter at issue, appeals will be heard by a panel of one or three members. Persons may intervene in an appeal by specifying the nature of their interest in the appeal and by indicating the reason for intervening and how they may assist the Tribunal in the resolution of the appeal.

Hearings

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

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

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

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

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

Videoconference hearings are used as an alternative to holding hearings in locations across Canada or requiring parties from outside Ontario or Quebec to present themselves at the Tribunal's premises in Ottawa. The procedures are very similar to hearings held before the Tribunal at its premises. However, the Tribunal requires that written materials, exhibits, aids to argument, etc., be filed with the Tribunal prior to the videoconference hearing.

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

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

Appeals Considered

During the fiscal year, the Tribunal heard 46 appeals of which 25 related to the *Customs Act* and 21 to the *Excise Tax Act*. Decisions were issued in 58 cases, of which 29 were heard during the fiscal year.

Summary of Selected Decisions

GFT Mode Canada v. DMNR
 AP-96-046 and AP-96-074
 Decision: Motion dismissed (May 18, 2000)

Decisions on Appeals

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	12	5	19	36
<i>Excise Tax Act</i>	15	-	7	22

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

Of the many cases heard by the Tribunal in carrying out its appeal functions, several decisions stand out, either because of the particular nature of the product in issue or because of the legal significance of the case. Brief summaries of a representative sample of such appeals follow, two of which were heard under the *Customs Act* and one under the *Excise Tax Act*. These summaries have been prepared for general information purposes only and have no legal status.

This was a preliminary motion in appeals made under subsection 67(1) of the *Customs Act* from redeterminations made by the CCRA in respect of the value for duty of imported goods. In these decisions, the respondent assessed duty on payments made by the appellant to the licensors as “royalties” pursuant to paragraph 48(5)(a) of the *Customs Act*. In his brief, the respondent argued that, in the alternative, a portion of the fees paid pursuant to the sublicense and licence agreements should be added to the price paid or payable as an assist.

In the motion, the appellant requested that the Tribunal strike out the respondent’s brief and that the Tribunal allow the appeals on the basis of the remaining documentation on file. The appellant argued that the respondent’s pleadings did not establish a *prima facie* case. The appellant also argued that the respondent could not, in an appeal before the Tribunal, present grounds for the assessment of duty that were not covered by the respondent’s redetermination.

The Tribunal was of the view that this motion, dealing with the nature of an appeal under section 67 of the *Customs Act*, raised three main issues: (1) whether the Tribunal had jurisdiction to strike out pleadings and decide an appeal on a preliminary motion; (2) whether the Tribunal should consider the respondent’s alternative argument that the payments made by the appellant to the licensors were assists; and (3) whether the Tribunal should strike out the respondent’s pleadings and allow the appeals.

On the first question, the appellant argued that the Tribunal had jurisdiction under subsection 17(2) of the CITT Act and rules 5, 18(1)(f) and 24 of the Rules

of Procedure to consider the motion. As for the respondent, he argued that the Tribunal did not have jurisdiction to hear a preliminary motion to strike out pleadings other than with respect to jurisdictional issues. The Tribunal took the position that section 67 of the *Customs Act* does not give the parties the unrestricted right to a hearing, even when one is unnecessary. In the Tribunal's view, section 67 should not be interpreted to mean that the Tribunal cannot control the procedure by which an appeal is determined. Therefore, the Tribunal was of the view that it had jurisdiction, on a preliminary motion, to strike out pleadings and dismiss an appeal, but would only do so when it was "plain and obvious" or "beyond doubt" that the pleadings disclosed no reasonable cause of action.

With respect to the issue of whether the Tribunal should consider the respondent's alternative argument that the payments made by the appellant to the licensors were assists, the appellant submitted that the respondent could not raise an alternative ground for the assessment of duties, i.e. one that was not part of the respondent's redeterminations pursuant to subsection 63(3) of the *Customs Act*, which forms the basis of these appeals. The appellant argued that the decision of the Supreme Court of Canada in *Continental Bank of Canada v. Canada (Continental Bank)*, a tax case, applied to decisions of the Tribunal, precluding the respondent from raising new arguments before the Tribunal. The appellant also argued that the Tribunal, on its own initiative, could not come to a decision in a customs appeal that is different from the respondent's redetermination or one that was argued by the appellant. The respondent argued that an appeal pursuant to section 67 of the *Customs Act* is made from the respondent's redetermination or reappraisal, not his reasons for that decision. Whether the payments made by the appellant to the licensors were dutiable as "royalties" or as "assists" constituted the reasons for the decision.

It was the Tribunal's view that, in an appeal, the respondent may argue alternative or new grounds for the value for duty of goods in support of his redetermination which were not part of the reasons for his redetermination. The Tribunal considered that *Continental Bank* did not apply to the circumstances of the present appeals, given that the respondent had, in that case, attempted to raise a new ground in support of his redetermination at the appellate level. The Tribunal, by contrast, is a "court of first instance" where evidence is heard, witnesses are cross-examined and argument is made. Pursuant to section 67 of the *Customs Act*, the Tribunal is given a broad jurisdiction to make "such order, finding or declaration as the nature of the matter may require". Therefore, the Tribunal was of the view that the respondent could raise alternative grounds for his decision. In the Tribunal's view, whether an item is dutiable arises from the application of the provisions of the *Customs Act*, not by virtue of the respondent's redetermination. The Tribunal's objective in hearing an appeal is to apply the valuation sections of the *Customs Act* to the evidentiary record presented at the hearing in order to ascertain the proper value for duty of the goods.

**Western Construction
J-1 Contracting
Penney Construction
S M Construction
Labrador
Construction
RDN Construction
Provincial Paving
Terra Nova Industries
Triple C
Holdings/Penney
Investments
McNamara
Construction
Modern Paving
Pyramid Construction
and Clifford Sheaves
Construction
v.
MNR**

AP-99-093 to
AP-99-102 and
AP-2000-010 to
AP-2000-012

*Decision:
Appeals allowed
(November 20, 2000)*

Dealing with the third issue before it, i.e. whether it should strike out the respondent's pleadings and allow the appeals, the Tribunal was of the view that the present case was not one in which it was "plain and obvious" or "beyond doubt" that the pleadings disclosed no reasonable cause of action. This standard had not been met, as the legal principles at issue that concern the "value for duty" under the *Customs Act* had not yet been settled. Further, the factual underpinnings of the case were also in dispute and had not been proven. As such, the Tribunal concluded that a full hearing should be held in this matter.

The motion was dismissed. The Tribunal's decision is currently under appeal.

These were appeals made pursuant to section 81.19 of the *Excise Tax Act* of assessments of the Minister with respect to excise tax imposed on diesel fuel used for heating aggregate rock in the manufacture of asphalt. The appellants carried on business in Newfoundland and conducted, among other things, road construction work using asphalt manufactured or produced by them in portable asphalt drum mixing plants. In this case, the Tribunal had to determine whether the fuel oil that was intended for use and actually used by the appellants to heat aggregate rock in the manufacture of asphalt was "heating oil" within the definition of "diesel fuel" found in subsection 2(1) of the *Excise Tax Act* and, consequently, whether the fuel oil so used was exempt from the excise tax.

The appellants and the respondent provided the Tribunal with an agreed statement of facts with respect to the use of the fuel oil and the manufacturing process. In addition, a senior advisor in fuels and additives at Petro-Canada was qualified as an expert in the petroleum fuel standards used in Canada and testified on the appellants' behalf. The expert witness provided explanations regarding the standards for heating fuel oil (HFO) adopted by one of the Canadian General Standards Board committees, the Committee on Middle Distillate Fuels. He further indicated that the standard for HFO was, in fact, the national standard in Canada and was used without modification by the Government of Canada for its purchases of heating oil. He testified that the standard for HFO specified that type 0 to 6 fuel oils could be used for the generation of heat for both domestic and industrial purposes. When asked to define what was commonly understood by the expression "used for industrial purposes", he testified that it could be any industrial use and gave examples of several types of non-domestic applications, such as in asphalt dryers.

The appellants argued that the standard for HFO was representative of the common understanding of the industry. The appellants also noted that fiscal statutes, such as the *Excise Tax Act*, were no longer to be construed by a strictly literal method and were to be interpreted according to the principles that apply to

all legislation. The respondent submitted that the appellants did not intend to use or did not actually use the fuel oil as heating oil and that, therefore, it was not exempt from the provisions of the *Excise Tax Act*. The respondent urged the Tribunal to follow the Tariff Board's ruling in *Canadian Utilities v. DMNRCE (Canadian Utilities)*, in which it attributed to the term "heating" the meaning of raising the temperature in buildings for human convenience. Furthermore, the respondent submitted that the jurisprudence clearly indicated that a statute must be construed according to the ordinary meaning of the words when the provision is clear and unambiguous, which was the case here. The respondent argued that the term "heating oil" was defined in dictionaries as fuel oil used in domestic heating units or for residential heating.

As there is no definition of the term "heating oil" in the *Excise Tax Act*, the Tribunal had to determine how it was to be interpreted. The Tribunal was of the view that the evidence adduced in these appeals clearly led to the conclusion that the term "heating oil" had to be construed according to the terminology given by people familiar with the petroleum industry. The evidence before the Tribunal was that the HFOs covered by the national standards were intended for use in oil-burning equipment for the generation of heat for domestic and industrial purposes. The Tribunal was also of the view that "industrial purposes" could refer to the heating of aggregate rock in the manufacture of asphalt. The Tribunal was also convinced that this approach fairly reflected the object of the *Excise Tax Act* and the intention of Parliament. In view of the legislative and definitional evolution with respect to the term "heating oil", the Tribunal felt that this case could be distinguished from the *Canadian Utilities* decision. Therefore, the Tribunal found that the fuel oil used by the appellants to heat aggregate rock in the manufacture of asphalt was heating oil and was exempt from excise tax under the *Excise Tax Act*.

**Sharp Electronics of
Canada
v.
DMNR**
AP-98-092

*Decision:
Appeal allowed
(7 June 2000)*

This was an appeal from a decision of the Deputy Minister of National Revenue made under section 63 of the *Customs Act* regarding the tariff classification of photocopier toner cartridges. The issue in this appeal was whether the toner cartridges imported by the appellant were properly classified in heading No. 37.07 of Schedule I to the *Customs Tariff* as chemical preparations for photographic uses, as determined by the respondent, or should have been classified in heading No. 90.09 as parts and accessories of photocopying apparatus, as claimed by the appellant. The photocopier toner cartridges in issue were temporarily attached to photocopiers in order to transfer toner contained in the cartridge into the toner hopper of photocopiers. The toner was used in the photocopying process to make the image being photocopied visible on plain paper.

The Tribunal heard the expert testimony of a staff member of the Technical Education Department at Sharp Electronics Canada Ltd., who developed instructional courses for the company. Explanations were given regarding the functioning of the toner cartridges, their specific design and their different components. The appellant argued that the toner cartridges were “parts” because they were committed for use with particular types of photocopiers and could remain attached to the photocopiers while in operation. In support of its argument, the appellant referred to two Classification Opinions published by the World Customs Organization (WCO). The appellant argued that these opinions classified two types of toner cartridges, one with moving parts and the other without moving parts, as parts and accessories of photocopying apparatus. The respondent argued, among other things, that the toner cartridges were not parts or accessories, since they were not essential to the photocopying process. With respect to the Classification Opinions of the WCO, it was the respondent’s position that the cartridges in issue were distinct from those mentioned in the Classification Opinions, as they dealt with cartridges with moving parts, while the toner cartridges in issue did not have moving parts.

While heading No. 37.07 would appear to cover the goods in issue, the Tribunal was persuaded that the goods should be classified under tariff item No. 9009.90.90 as parts and accessories of photocopying apparatus. The Tribunal was of the view that the cartridges were attached to specific models of photocopiers and enhanced their effectiveness. The cartridges facilitated the delivery of toner to the photocopier without spillage. Pursuant to Rule 1 of the *General Rules for the Interpretation of the Harmonized System*, the Tribunal concluded that Note 2 to Chapter 90, which states that parts and accessories, if suitable for use solely or principally with a particular kind of machine, are to be classified with the machines, instruments or apparatus of that kind, directed the classification of the goods in issue under tariff item No. 9009.90.90. The Tribunal also relied upon the Classification Opinions presented by the appellant. In the Tribunal’s view, the evidence indicated that the cartridges were classifiable under tariff item No. 9009.90.90 as accessories of photocopying apparatus. For these reasons, the appeal was allowed.

TABLE 1**Appeal Decisions Rendered Under Section 67 of the *Customs Act* and Section 81.19 of the *Excise Tax Act* Between April 1, 2000, and March 31, 2001**

Appeal No.	Appellant	Date of Decision	Decision
<i>Customs Act</i>			
AP-99-010	Phosyn plc	April 13, 2000	Allowed
AP-99-061	Sport Dinaco Inc.	May 4, 2000	Allowed
AP-98-102	Calego International Inc.	May 29, 2000	Allowed
AP-98-092	Sharp Electronics of Canada Ltd.	June 7, 2000	Allowed
AP-99-073	Rollins Machinery Ltd.	June 12, 2000	Dismissed
AP-98-093 and AP-98-094	Cast Terminals Inc. and Terminus Racine (Montréal) Ltd.	June 22, 2000	Allowed
AP-99-012	Rittal Systems Ltd.	June 30, 2000	Allowed in part
AP-99-083	Sandvik Tamrock Canada Inc.	June 30, 2000	Dismissed
AP-99-029 and AP-99-046	Sanyo Canada Inc.	July 5, 2000	Dismissed
AP-99-082	Nokia Products Limited	July 26, 2000	Allowed
AP-98-002	Sherson Marketing Corporation	July 27, 2000	Allowed
AP-98-097	Sherson Marketing Corporation	July 27, 2000	Allowed in part
AP-98-098	Sherson Marketing Corporation	July 27, 2000	Allowed in part
AP-98-099	Sherson Marketing Corporation	July 27, 2000	Dismissed
AP-99-042	Pabla Fashions Ltd.	August 30, 2000	Dismissed
AP-99-074	Avon Canada Inc.	August 30, 2000	Dismissed
AP-98-012	EM Plastic & Electric Products Ltd.	August 31, 2000	Allowed
AP-93-058	Metabal Ltd.	September 7, 2000	Allowed in part
AP-93-079	Olympia Tube Ltd.	September 7, 2000	Allowed in part
AP-99-043	Toyota Canada Inc.	September 12, 2000	Dismissed
AP-99-063	GL&V/Black Clawson-Kennedy	September 27, 2000	Allowed
AP-99-014	Patagonia International, Inc.	September 28, 2000	Allowed
AP-99-086	Canadisc Inc.	October 24, 2000	Dismissed
AP-2000-026	Continuous Colour Coat Limited	November 17, 2000	Allowed
AP-99-085	Bio Agri Mix Ltd.	November 28, 2000	Dismissed
AP-99-105	Yamaha Motor Canada Ltd.	December 6, 2000	Dismissed
AP-94-143	Liz Claiborne (Canada) Ltd.	December 12, 2000	Dismissed

Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-97-133	Chicago Rawhide Products Canada Ltd.	December 21, 2000	Dismissed
AP-99-117	Lexus Products Ltd.	January 11, 2001	Dismissed
AP-2000-015	Costco Canada Inc.	January 11, 2001	Dismissed
AP-2000-017	Intersave West Buying and Merchandising Service	January 16, 2001	Dismissed
AP-99-092	Bauer Nike Hockey Inc.	February 14, 2001	Dismissed
AP-97-138	Atlas Alloys, Division of Rio Algom Limited	February 19, 2001	Dismissed
AP-99-104	Boehringer Mannheim Canada Ltd.	February 22, 2001	Dismissed
Excise Tax Act			
2704	596720 Ontario Limited	July 18, 2000	Allowed
2705	J.J. Taylor & Sons Limited	July 18, 2000	Dismissed
2706	Diesel Equipment Limited	July 18, 2000	Allowed
AP-99-093 to AP-99-102 and AP-2000-010 to AP-2000-012	Western Construction Company Limited, J-1 Contracting Ltd., Penney Construction Limited, S M Construction Company Limited, Labrador Construction Limited, RDN Construction Limited, Provincial Paving Limited, Terra Nova Industries Ltd., Triple C Holdings Ltd./Penney Investments Ltd., McNamara Construction Company, a Division of Tarmac Canada Inc., Modern Paving Limited, Pyramid Construction Limited and Clifford Sheaves Construction Limited	November 20, 2000	Allowed
AP-99-118	Lady Rosedale Inc.	January 9, 2001	Dismissed
AP-99-068 to AP-99-072	Shoppers Drug Mart Inc.	February 26, 2001	Dismissed

TABLE 2**Tribunal Decisions Appealed to the Federal Court of Canada Between April 1, 2000, and March 31, 2001, and Pending as of March 31, 2001¹**

Appeal No.	Appellant	Federal Court No.
2983	Les Industries Vogue Ltée	A—419—00
AP-89-153	Mo-Tires Ltd.	T—3288—90
AP-90-076	Kliewer's Cabinets Ltd.	T—1331—91/T—1986—94
AP-90-117	Artec Design Inc.	T—1556—92
AP-90-118	Seine River Cabinets Ltd.	T—1555—92
AP-91-045	Imperial Cabinet (1980) Co. Ltd.	T—1557—92
AP-91-141	The Sheldon L. Kates Design Group Limited	T—2957—94
AP-93-123	W. Ralston (Canada) Inc.	T—2112—95
AP-93-264	Cragg & Cragg Design Group Ltd.	T—2942—94
AP-94-212 and AP-94-213	Chaps Ralph Lauren, A Division of 131384 Canada Inc. and Modes Alto-Regal, Inc.	A—53—98
AP-95-045	Sidewinder Conversions Ltd.	T—314—97
AP-96-056	Informco Inc.	T—2689—97
AP-97-063, AP-97-067, AP-97-077, AP-97-079, AP-97-084, AP-97-085, AP-97-096, AP-97-103, AP-97-115 and AP-97-136	AYP (Canada) Inc.	A—57—00
AP-97-137	Asea Brown Boveri Inc.	A—171—00
AP-98-047	N.C. Cameron & Sons Ltd.	A—341—00
AP-98-085	Utex Corporation	A—28—00
AP-99-014	Patagonia International Inc.	A—820—00
AP-99-029 and AP-99-046	Sanyo Canada Inc.	A—605—00
AP-99-063	GL&V/Black Clawson-Kennedy	A—306—00
AP-99-083	Sandvik Tamrock Canada Inc. and Secoroc, A Division of Atlas Copco Canada Inc.	A—550—00
AP-99-105	Yamaha Motor Canada Ltd.	A—001—01

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all Tribunal decisions appealed to the Federal Court of Canada between April 1, 2000, and March 31, 2001.

TABLE 3**Appeal Decisions of the Federal Court of Canada Rendered Between April 1, 2000, and March 31, 2001¹**

Appeal No.	Appellant	Federal Court No.	Decision	Date
2983	Les Industries Vogue Ltée.	T—1270—92	Allowed	May 19, 2000
AP-91-201	152633 Canada Inc./Sako Auto Leasing	T—1686—93	Discontinued	November 15, 2000
AP-93-274 and AP-93-294	Continuous Colour Coat Limited	T—2831—94	Allowed	June 5, 2000
AP-93-294	Continuous Colour Coat Limited	A—854—97	Allowed in part	May 3, 2000
AP-95-230	Euro-Line Appliances	A—323—97	Dismissed	May 17, 2000
AP-95-261 and AP-95-263	Charley Originals Ltd., Division of Algo Group Inc. and Mr. Jump Inc., Division of Algo Group Inc.	A—528—97	Dismissed	May 19, 2000
AP-96-117	Yves Ponroy Canada	A—97—98	Dismissed	July 24, 2000
AP-96-208 and AP-97-009	Philips Electronics Ltd.	A—230—98	Dismissed	May 16, 2000
AP-97-002 and AP-97-058	Flora Manufacturing & Distributing Ltd.	A—633—98 and A—617—98	Dismissed	July 24, 2000
AP-97-010	Hilary's Distribution Ltd.	A—632—98	Dismissed	July 24, 2000
AP-97-029	Entrelec Inc.	A—755—98	Allowed	September 14, 2000
AP-97-052	Flora Manufacturing & Distributing Ltd.	A—720—98	Dismissed	July 24, 2000
AP-97-100	Brother International Corporation (Canada) Ltd.	A—81—99	Dismissed	September 27, 2000
AP-98-007 and AP-98-010	Richards Packaging Inc. and Duopac Packaging Inc.	A—262—99	Dismissed	November 29, 2000

1. The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not participate in appeals to the Federal Court of Canada, it is unable to confirm that the list contains all appeals that were decided between April 1, 2000, and March 31, 2001.

CHAPTER V

ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

Introduction

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

Textile Reference

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as amended on March 20 and July 24, 1996, on November 26, 1997, and on August 19, 1999, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations in respect of those requests to the Minister of Finance.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, in its manufacturing operations. The textile inputs on which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70 of the schedule to the *Customs Tariff*. Since July 24, 1996, and at least until July 1, 2002, the following yarns are not included in the textile reference:

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

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, textile- and/or end-use-specific tariff provisions. In the case of requests for tariff relief on textile inputs used in the manufacture of

	<p>women’s swimsuits, co-ordinated beachwear and co-ordinated accessories only, the recommendation could include company-specific relief. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.</p>
<p>Process</p>	<p>Domestic producers seeking tariff relief must file a request with the Tribunal. Producers must file with the request either samples of the textile input for which tariff relief is being sought or a National Customs Ruling from the CCRA covering the input. If the Tribunal determines that the request is properly documented, it will conduct an investigation to determine if it should recommend tariff relief.</p>
<p>Filing and Notification of a Request</p>	<p>Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice on its Web site announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.</p> <p>This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.</p>
<p>Investigations</p>	<p>When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as the Department of Foreign Affairs and International Trade, the Department of Industry, the Department of Finance and the CCRA. The notice is also published in the <i>Canada Gazette</i>.</p> <p>In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal’s recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.</p>

	<p>To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits and questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of providing a basis for determining whether the tariff relief sought will maximize net economic gains for Canada.</p> <p>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.</p> <p>The procedures for the conduct of the Tribunal's investigation envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.</p> <p>Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Only independent counsel who have filed declarations and confidentiality undertakings may have access to such confidential information.</p>
Recommendations to the Minister	<p>The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within an earlier specified time frame that 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.</p>
Request for Review	<p>Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.</p>
Review on Expiry	<p>Where the Minister of Finance has made an order for tariff relief subject to a scheduled expiry date, the Tribunal will, before the expiry date, issue a formal</p>

	<p>notice that the tariff relief provided by the order will expire unless the Tribunal issues a recommendation that tariff relief should be continued and the Minister of Finance implements the recommendation. The notice invites interested parties to file submissions for or against continuation of tariff relief.</p>
	<p>If no opposition to the continuation of tariff relief is received, upon receipt of submissions and information supporting the request for continuation of tariff relief, the Tribunal may decide to recommend the continuation of tariff relief. Conversely, if no request for continuation of tariff relief is submitted, the Tribunal may decide to recommend the termination of tariff relief. If it appears that a more complete review is warranted, the Tribunal will conduct an investigation to consider whether all relevant factors that led it to recommend tariff relief continue to apply and whether extending tariff relief under such conditions would continue to provide net economic gains for Canada.</p>
<p>Annual Status Report</p>	<p>In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on January 31, 2001, with its sixth annual status report on the investigation process. The status report covered the period from October 1, 1999, to September 30, 2000.</p>
<p>Recommendations Submitted During the Fiscal Year</p>	<p>During the fiscal year, the Tribunal issued 8 reports to the Minister of Finance, which related to 8 requests for tariff relief. In addition, the Tribunal issued 1 report further to a reconsideration of a recommendation issued previously by the Tribunal. At year end, 4 requests were outstanding, of which an investigation had been commenced in respect of 1 request. Table 1 at the end of this chapter summarizes these activities.</p>
<p>Recommendations in Place</p>	<p>By the end of the fiscal year, the Government had implemented 75 recommendations by the Tribunal, of which 68 are still subject to tariff relief orders. Table 3 provides a summary of recommendations currently implemented.</p> <p>The implementation of Tribunal recommendations is made by adding new tariff items to the <i>Customs Tariff</i>. During the fiscal year, these tariff items covered imports worth \$170 million (estimated) and provided tariff relief worth \$23 million (estimated), the latter amount representing an increase of 10 percent over 1999-2000.</p> <p>A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.</p>

Peerless Clothing

TR-99-004

*Recommendation:
Indeterminate tariff relief
(July 28, 2000)*

The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations of: (1) woven fabrics, solely of combed wool with average fibre diameters of 17.5 microns or less and of combed fine animal hair, measuring 100 decitex or less per single yarn, containing not less than 7 percent by weight of fine animal hair, as certified by the exporter, of a weight of 140 g/m² or more but not exceeding 300 g/m², of subheading No. 5112.11 or 5112.19, for use in the manufacture of men's suits, suit-type jackets, blazers, vests (waistcoats) and trousers; and (2) woven fabrics, solely of combed wool and of combed fine animal hair, containing not less than 15 percent by weight of fine animal hair, as certified by the exporter, of a weight of 140 g/m² or more but not exceeding 300 g/m², of subheading No. 5112.11 or 5112.19, for use in the manufacture of men's sports jackets.

In its report, the Tribunal noted that Peerless's ability to source wool/fine animal hair fabrics offshore had contributed to the enormous success of suits made from lightweight and year-round fabrics. The Tribunal further noted that Cleyn & Tinker, a domestic manufacturer of worsted fabrics was not in the niche market of the very fine wool/fine animal hair blends, but rather in the broader market of wool fabrics. This led the Tribunal to believe that Cleyn & Tinker was not now, nor would it be in the foreseeable future, in a position to produce and supply, in commercial quantities, the very fine wool/fine animal hair fabrics required by Peerless, and that tariff relief for these fabrics would provide net economic gains to Canada. Turning to sports jackets, the Tribunal noted that the fabrics for this end use are generally made from coarser yarns and that the content of fine animal hair is usually higher than that for suit fabrics. While it noted that Cleyn & Tinker had some jacket fabrics containing 10 to 20 percent fine animal hair that were in production or under development, the Tribunal was of the view that these fabrics represented a very small portion of Cleyn & Tinker's overall activity and were only available in a limited range of patterns and colours. Consequently, the Tribunal recommended that tariff relief be provided for this type of fabric as it would provide net economic gains to Canada, but applied a 15 percent threshold with regard to the minimum percentage of fine animal hair that these fabrics should contain.

Coloridé

TR-99-006

*Recommendation:
Indeterminate tariff relief
(July 27, 2000)*

The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations of single filament yarn, solely of nylon, of subheading No. 5402.41, for use in the manufacture of hair colour charts.

The Tribunal noted that, based on the information on file, it appeared unlikely that Plastifil, a domestic producer, could, in the foreseeable future, sell a given volume of yarn to Coloridé, even if the customs duty were to remain in

effect. Moreover, the Tribunal noted that, to make its extrusion line more profitable, Plastifil seemed more interested in exploiting other markets, such as fishing yarn and sewing thread. Consequently, the Tribunal was of the view that the limited costs that the domestic industry may eventually incur as a result of this tariff relief would be more than offset by future gains for Coloridé.

JMJ Fashions

TR-99-008

*Recommendation:
Indeterminate tariff relief
(October 27, 2000)*

The Tribunal recommended to the Minister of Finance that tariff relief be granted for an indeterminate period of time on importations of woven fabric, having a 3/2 right hand twill weave with a steep twill line of approximately 63 degrees, dyed, solely of single non-textured polyester filaments, with a twist exceeding 1,250 turns per metre in the warp and the weft, having “S” twist yarns in the warp and two “S” twist yarns followed by two “Z” twist yarns alternating in the weft, of a weight not exceeding 250 g/m², of subheading No. 5407.61, for use in the manufacture of women’s blouses, jackets, pants, skirts and dresses.

The Tribunal saw little cost in the requested tariff relief being granted, as it did not view the fabrics currently produced domestically by Consoltex as being substitutable for the subject fabric. With regard to the fabric that was under development by Consoltex, the Tribunal noted that Consoltex’s ability to supply and market acceptance had not, as yet, been demonstrated. Accordingly, the Tribunal could not attribute any costs that might be incurred by Consoltex, and concluded that tariff relief would provide a yearly benefit to MJM of more than \$150,000.

TABLE 1**Disposition of Requests for Tariff Relief Between April 1, 2000, and March 31, 2001**

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-99-004	Peerless Clothing Inc.	Fabric	July 28, 2000	Indeterminate tariff relief
TR-99-005	Distex Inc.	Fabric	April 4, 2000	Indeterminate tariff relief
TR-99-006	Coloridé Inc.	Yarn	July 27, 2000	Indeterminate tariff relief
TR-99-007	Soltex Textiles Canada Inc.	Nonwoven	July 25, 2000	File closed
TR-99-008	JMJ Fashions Inc.	Fabric	October 27, 2000	Indeterminate tariff relief
TR-2000-001	Peerless Clothing Inc.	Fabric	January 24, 2001	Indeterminate tariff relief
TR-2000-002	Majestic Industries (Canada) Ltd.	Fabric	January 12, 2001	Indeterminate tariff relief
TR-2000-003	Tantalum Mining Corporation of Canada Limited	Fabric	March 21, 2001	Indeterminate tariff relief
TR-2000-004	Ballin Inc.	Fabric	March 9, 2001	Indeterminate tariff relief
TR-2000-005	Peerless Clothing Inc.	Fabric	In progress	
TR-2000-006	Doubletex	Fabric	Not yet initiated	
TR-2000-007	Scapa Tapes North America Ltd.	Fabric	Not yet initiated	
TR-2000-008	Scapa Tapes North America Ltd.	Fabric	Not yet initiated	

TABLE 2

Disposition of a Request for Reconsideration Between April 1, 2000, and March 31, 2001

Request No.	Request for Reconsideration by	Textile Input	Date of Disposition	Recommendation
TR-99-003A	Doubletex	Fabric	October 6, 2000	Recommendation of February 4, 2000 (TR-99-003) reaffirmed

TABLE 3**Tariff Relief Recommendations in Place**

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-94-001		Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.12	Indeterminate
TR-94-004		Woods Canada Limited	5208.52.10	Indeterminate
TR-94-010		Palliser Furniture Ltd.	5806.20.10	Indeterminate
TR-94-012		Peerless Clothing Inc.	5309.29.20	Indeterminate
TR-94-013 and TR-94-016		MWG Apparel Corp.	5208.42.20 5208.43.20 5208.49.20 5513.31.10 5513.32.10 5513.33.10	Indeterminate
TR-94-017 and TR-94-018		Elite Counter & Supplies	9943.00.00	Indeterminate
TR-95-003		Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20	Indeterminate
TR-95-004		Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 5208.52.20	Indeterminate
TR-95-005		Lingerie Bright Sleepwear (1991) Inc.	5513.11.10 5513.41.10	Indeterminate
TR-95-009		Peerless Clothing Inc.	5408.21.10 5408.21.20 5408.22.21 5408.22.30	Indeterminate
TR-95-010 and TR-95-034		Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20	Indeterminate
TR-95-011		Louben Sportswear Inc.	5408.31.10 5408.32.20	Indeterminate
TR-95-012		Perfect Dyeing Canada Inc.	5509.32.10	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-95-013A		Doubletex	5208.11.30 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20	Indeterminate
TR-95-036		Canadian Mill Supply Co. Ltd.	5208.21.20	Indeterminate
TR-95-037		Paris Star Knitting Mills Inc.	5408.24.11 5408.24.91 5408.34.10 5516.14.10 5516.24.10	Indeterminate
TR-95-051		Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22	Indeterminate
TR-95-053 and TR-95-059		Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.10 5802.19.10 5802.19.20	Indeterminate
TR-95-056		Sealy Canada Ltd.	3921.19.10 5407.69.10 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6002.43.20	Indeterminate
TR-95-057 and TR-95-058		Doubletex	5407.51.10 5407.61.92 5407.69.10 5515.11.10 5516.21.10 5516.91.10	Indeterminate
TR-95-060		Triple M Fiberglass Mfg. Ltd.	7019.59.10	Indeterminate
TR-95-061		Camp Mate Limited	6002.43.30	Indeterminate
TR-95-064 and TR-95-065		Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6002.43.60	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-96-003		Venture III Industries Inc.	5407.61.92	Indeterminate
TR-96-004		Acton International Inc.	5906.99.21	Indeterminate
TR-96-006		Alpine Joe Sportswear Ltd.	P.C. 1998-1118	Six year s
TR-96-008 and TR-96-010 to TR-96-013		Les Collections Shan Inc.	P.C. 1997-1668	Five year st
TR-97-001		Jones Apparel Group Canada Inc.	5407.91.10 5407.92.20 5407.93.10 5408.21.30 5408.22.40 5408.23.20 5408.31.30 5408.32.40 5408.33.10	Indeterminate
TR-97-002 and TR-97-003		Universal Manufacturing Inc.	5208.43.30 5513.41.20	Indeterminate
TR-97-006		Peerless Clothing Inc.	5407.51.30 5903.90.22 5903.90.23 5903.90.24 6002.43.40 6002.43.50	Indeterminate
TR-97-004, TR-97-007, TR-97-008 and TR-97-010		Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20	Indeterminate
TR-97-011		Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16	Indeterminate
TR-97-012		Ballin Inc.	5407.93.30 5516.23.20	Indeterminate
TR-97-014		Lenrod Industries Ltd.	5603.93.40	Indeterminate
TR-97-015, TR-97-016 and TR-97-020		Helly Hansen Canada Ltd.	5903.20.24	Indeterminate
TR-98-001		Cambridge Industries	5608.19.20	Indeterminate
TR-98-002		Distex Inc.	6002.92.20	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TR-98-004, TR-98-005 and TR-98-006		Ladcal Investments Ltd., O/A Pintar Manufacturing Nour Trading House and T.S. Simms and Company Limited	5806.10.20	Indeterminate
TR-98-007		Caulfeild Apparel Group Ltd.	5208.43.30	Indeterminate
TR-98-016		Peerless Clothing Inc.	5407.93.20	Indeterminate
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.50 5408.33.20 5408.34.20	Indeterminate
TR-98-019		Tribal Sportswear Inc.	5209.12.30 5209.22.20 5209.32.10	Indeterminate
TR-99-002		Albany International Canada Inc.	5404.10.20	Indeterminate
TR-99-004		Peerless Clothing Inc.	5112.11.20 5112.11.30 5112.19.20 5112.19.30	Indeterminate
TR-99-006		Coloridé Inc.	5402.41.15	Indeterminate
TA-98-001	TE-97-004 (TR-95-009)	Certain dyed woven fabrics of rayon and polyester	5408.31.20 5408.32.30	Indeterminate
TA-98-002	TE-97-003 (TR-94-009)	Vinex FR-9B fabric	5512.99.10	Indeterminate
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	5801.35.10	Indeterminate

Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No./Order in Council	Duration
TA-98-004	TE-98-002 (TR-94-002 and TR-94-002A)	Certain ring-spun yarns	5205.14.20 5205.15.20 5205.24.20 5205.26.20 5205.27.20 5205.28.20 5205.35.20 5205.46.20 5205.47.20 5205.48.20 5206.14.10 5206.15.10 5206.24.10 5206.25.10 5509.53.10 5509.53.20 5509.53.30 5509.53.40	Three years

CHAPTER VI

PROCUREMENT REVIEW

Introduction

Suppliers may challenge federal government procurement decisions that they believe have not been made in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT, the AGP, or the *Agreement on the Procurement of Telecommunications Equipment*. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, January 1, 1996, and November 1, 2000, respectively.

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

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

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

A staff investigation, which can include interviewing individuals and examining files and documents, may be conducted and result in the production of a Staff Investigation Report. This report is circulated to the parties for their comments. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides whether a hearing should be held.

The Tribunal then makes a determination, which may consist of recommendations to the government institution (such as retendering, 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

	1999-2000	2000-2001
CASES RESOLVED BY THE PARTIES		
Resolved Between Parties	-	-
Withdrawn	4	5
Abandoned While Filing	-	1
Subtotal	4	6
INQUIRIES NOT INITIATED OR CONTINUED ON PROCEDURAL GROUNDS		
Lack of Jurisdiction	6	6
Late Filing	9	8
No Valid Basis	13	17
Subtotal	28	31
CASES DETERMINED ON MERIT		
Complaint Not Valid	13	15
Complaint Valid	14	13
Subtotal	27	28
IN PROGRESS	9	22
TOTAL	68	87

Summary of Selected Determinations

During the fiscal year, the Tribunal issued 28 written determinations of its findings and recommendations, which related to 28 procurement complaints. In 13 of the 28 written determinations, the complaints were determined to be valid or valid in part. In these cases, various remedies were granted in the form of cost awards or recommendations. Twenty-two other cases were in progress at year end. Table 1 at the end of this chapter summarizes these activities.

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

<p>TELUS Integrated Communications</p> <p><i>PR-2000-017 and PR-2000-035</i></p> <p><i>Determination: Complaints valid in part (November 2, 2000)</i></p>	<p>The Tribunal made a determination with respect to two complaints filed by TELUS Integrated Communications Inc. (TELUS) concerning a solicitation by the Correctional Service of Canada (CSC). The solicitation was for the installation and operation, at each correctional facility in Canada, of telephone equipment and software and the associated telephone service (Inmate Telephone System).</p> <p>TELUS alleged that: (1) contrary to a provision of the AIT, the CSC selected a supplier whose proposal was not compliant with the mandatory requirements stipulated in the Request for Proposal (RFP); (2) the RFP did not clearly identify the requirements of the procurement and the criteria to be used in the evaluation of bids and the methods of weighting and evaluating the criteria; and (3) the procurement discriminated among potential suppliers, in that not all potential suppliers had access to certain critical information concerning the CSC's requirements.</p> <p>Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal determined that the complaints were valid in part. The Tribunal recommended that the CSC award the contract to TELUS, the only compliant bidder in response to this solicitation.</p>
<p>K-Lor Contractors Services</p> <p><i>PR-2000-023</i></p> <p><i>Determination: Complaint not valid (November 23, 2000)</i></p>	<p>The Tribunal made a determination with respect to a complaint filed by K-Lor Contractors Services Ltd. (K-Lor) concerning a solicitation of the Department of Public Works and Government Services (the Department) for the provision of services for the construction of a secure landfill site in Argentinia, Newfoundland.</p> <p>K-Lor alleged that, contrary to the AIT, the Department improperly rejected its tender for failing to provide the required "Certification of Mandatory Site Visit", which, K-Lor claims, it did include in its bid documents.</p> <p>After consideration, the Tribunal determined that the Department did not act contrary to the AIT when it declared K-Lor's bid non-responsive. Therefore, the Tribunal determined that the complaint was not valid.</p>
<p>AT&T Canada</p> <p><i>PR-2000-024</i></p> <p><i>Determination: Complaint valid (November 27, 2000)</i></p>	<p>The Tribunal made a determination with respect to a complaint filed by AT&T Canada Corp. (AT&T) concerning a solicitation of the Department on behalf of the Department of Industry. The solicitation was for the provision of asynchronous transfer mode services.</p> <p>AT&T alleged that, contrary to the provisions of NAFTA, the AIT and the AGP, the Department failed to apply the tendering procedures in a non-discriminatory manner. In its analysis, the Tribunal emphasized that the</p>

purpose of Chapter Five of the AIT is to establish a framework that will ensure equal access to procurement for all Canadian suppliers. The Tribunal determined that discrimination against suppliers is contrary to the AIT, even if the discrimination is not made on the basis of province or region. The Tribunal did not determine whether NAFTA and the AGP were applicable to the procurement in issue.

Having examined the evidence and arguments presented by the parties and considered the subject matter of the complaint, the Tribunal found that certain provisions of the RFP, adding costs to the price of the non-incumbent bidders' proposals, were discriminatory in their effects. Therefore, the Tribunal determined that the AIT had been breached and that the complaint was valid. The Tribunal recommended that the Department, in evaluating the proposals received in response to this solicitation and in identifying a successful bidder to be recommended for contract award, eliminate the effects of the costs that were identified as being contrary to the AIT.

E.H. Industries

PR-2000-026

*Inquiry not initiated/
No reasonable
indication of a breach
(October 30, 2000)*

The Tribunal made a decision with respect to a complaint filed by E.H. Industries Limited (EHI) concerning a solicitation of the Department on behalf of the Department of National Defence. The solicitation is for the provision of 28 basic vehicles, related ship alterations and long-term in-service support to replace the current CH124 Sea King helicopters.

EHI alleged that the Department discriminated against it and its helicopter, the Cormorant, by choosing a "lowest priced compliant" selection criterion and by failing to take into account the additional costs of operating two separate fleets of different helicopters.

Having examined the evidence contained in the complaint, the Tribunal decided not to initiate an inquiry into this complaint because the complaint did not disclose a reasonable indication that the Department had acted contrary to the AIT. The AIT does not require that the government use a certain type of selection method and nothing in the AIT requires the government to purchase a particular type or brand of product simply because it already owns some of that product or brand. In addition, the procurement was at the "letter of interest" stage and, therefore, the final specifications and selection criteria had not yet been set.

**Judicial Review of
Procurement
Decisions**

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

TABLE 1**Disposition of Procurement Complaints Between April 1, 2000, and March 31, 2001**

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-99-036	Unisource Techonology	December 8, 1999	Decision issued April 5, 2000 Complaint not valid
PR-99-037	Educom Training Systems Inc.	December 16, 1999	Decision issued May 3, 2000 Complaint not valid
PR-99-040	Brent Moore & Associates	December 20, 1999	Decision issued May 4, 2000 Complaint not valid
PR-99-043	Navatar	January 7, 2000	Decision issued May 30, 2000 Complaint not valid
PR-99-044	Navatar	January 10, 2000	Decision issued May 30, 2000 Complaint valid
PR-99-049	Telus Communications	February 25, 2000	Complaint withdrawn
PR-99-050	StorageTek Canada Inc.	February 28, 2000	Decision issued May 29, 2000 Complaint valid
PR-99-051	ACE/ClearDefense Inc.	March 8, 2000	Decision issued June 30, 2000 Complaint valid
PR-99-053	Rolls-Royce Industries Canada Inc.	March 22, 2000	Decision issued August 4, 2000 Complaint valid
PR-2000-001	APS-Antian Professional Services	April 7, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-002	FirstMark Technologies Ltd.	April 18, 2000	Not accepted for inquiry/Not a designated entity
PR-2000-003	Canadian Computer Rentals	April 18, 2000	Decision issued August 3, 2000 Complaint valid
PR-2000-004	Kildonan Associates Inc.	April 25, 2000	Decision issued July 20, 2000 Complaint not valid
PR-2000-005	Radiant Point Inc.	April 27, 2000	Decision issued September 11, 2000 Complaint valid in part
PR-2000-006	Arp Services	May 11, 2000	Not accepted for inquiry/Not a designated contract
PR-2000-007	FMD International Inc.	May 18, 2000	Decision issued August 22, 2000 Complaint not valid
PR-2000-008	Brookfield LePage Johnson Controls Facility Management Services	May 25, 2000	Decision issued September 6, 2000 Complaint valid
PR-2000-009	Crain-Drummond Inc.	May 29, 2000	Decision issued August 18, 2000 Complaint not valid
PR-2000-010	Thomson-CSF Systems Canada Inc.	May 30, 2000	Decision issued October 12, 2000 Complaint not valid

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2000-011	Western Star Trucks Inc.	May 31, 2000	Decision issued September 11, 2000 Complaint not valid
PR-2000-012	Sirius Consulting Group Inc.	June 13, 2000	Abandoned while filing
PR-2000-013	Valley Associates Inc.	June 13, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-014	Via Safe	June 14, 2000	Not accepted for inquiry/Not a designated contract
PR-2000-015	Trans-Cycle Industries Inc.	June 14, 2000	Complaint withdrawn
PR-2000-016	Radio Holland (Canada) Ltd.	June 15, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-017	TELUS Integrated Communications Inc.	June 20, 2000	Decision issued November 2, 2000 Complaint valid in part
PR-2000-018	Xwave Solutions Inc.	June 28, 2000	Decision issued September 26, 2000 Complaint not valid
PR-2000-019	TELUS Integrated Communications Inc.	June 29, 2000	Decision issued November 10, 2000 Complaint not valid
PR-2000-020	Sicom Systems Ltd.	June 30, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-021	Brookfield LePage Johnson Controls Facility Management Services	June 30, 2000	Decision issued September 6, 2000 Complaint valid
PR-2000-022	MIL Systems/Fleetway Inc.	July 6, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-023	K-Lor Contractors Services Ltd.	July 11, 2000	Decision issued November 23, 2000 Complaint not valid
PR-2000-024	AT&T Canada Corp.	July 13, 2000	Decision issued November 27, 2000 Complaint valid
PR-2000-025	PluriVox Media Corp.	July 17, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-026	Smartnet, Dynasty Components, a division of DCI, and MediaLog Systems Inc.	July 19, 2000	Dismissed/Late filing
PR-2000-027	Sciex Technology Inc.	July 21, 2000	Not accepted for inquiry/Late filing
PR-2000-028	Global Upholstery Co. Inc.	August 3, 2000	Decision issued November 1, 2000 Complaint not valid
PR-2000-029	K-LOR Contractors Services (BC) Ltd.	August 11, 2000	Complaint withdrawn
PR-2000-030	E.S.E.	August 29, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-031	Management 2000	September 5, 2000	Not accepted for inquiry/Late filing

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2000-032	RIV Limited	September 11, 2000	Complaint withdrawn
PR-2000-033	Dictaphone Canada	September 28, 2000	Not accepted for inquiry/Late filing
PR-2000-034	C ² Logistics Inc.	October 3, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-035	TELUS Integrated Communications Inc.	June 20, 2000	Decision issued November 2, 2000 Complaint valid in part
PR-2000-036	E.H. Industries Limited	October 11, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-037	Computer Talk Technology Inc.	October 25, 2000	Decision issued February 26, 2001 Complaint not valid
PR-2000-038	Papp Plastics & Distribution Ltd.	November 2, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-039	Siemens Westinghouse Incorporated	November 3, 2000	Decision issued March 19, 2001 Complaint valid in part
PR-2000-040	Canadian Helicopters Limited	November 16, 2000	Decision issued February 19, 2001 Complaint not valid
PR-2000-041	BancTec (Canada) Inc.	November 16, 2000	Decision issued February 14, 2001 Complaint valid in part
PR-2000-042	Spallumcheen Band	December 13, 2000	Accepted for inquiry
PR-2000-043	Sirius Consulting Group Inc.	December 13, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-044	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-045	Norleans Technologies Inc.	December 19, 2000	Not accepted for inquiry/Not a potential supplier
PR-2000-046	Greenbelt Agripark	December 21, 2000	Not accepted for inquiry/Not a designated contract
PR-2000-047	Valcom Ltd.	December 27, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-048	The Kirkland Partnership Inc.	December 28, 2000	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-049	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-050	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-051	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-052	Polaris Inflatable Boats (Canada) Ltd.	December 15, 2000	Accepted for inquiry
PR-2000-053	Polaris Inflatable Boats (Canada) Ltd.	January 4, 2001	Accepted for inquiry
PR-2000-054	Cisco Systems Canada Co.	January 5, 2001	Complaint withdrawn

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-2000-055	Foundry Networks	January 10, 2001	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-056	Cannabis Research Institute Inc.	January 12, 2001	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-057	Foundry Networks	January 29, 2001	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-058	Boyd Moving & Storage	February 7, 2001	Not accepted for inquiry/No reasonable indication of a breach
PR-2000-059	P&L Communications Inc.	February 8, 2001	Accepted for inquiry
PR-2000-060	Foundry Networks	February 8, 2001	Accepted for inquiry
PR-2000-061	Foundry Networks	February 9, 2001	Not accepted for inquiry/Late filing
PR-2000-062	Foundry Networks	February 10, 2001	Not accepted for inquiry/Late filing
PR-2000-063	FM One Alliance Corp.	February 12, 2001	Accepted for inquiry
PR-2000-064	Wescam Inc.	February 12, 2001	Accepted for inquiry
PR-2000-065	Cifelli Systems Corporation	February 16, 2001	Accepted for inquiry
PR-2000-066	Foundry Networks	February 19, 2001	Not accepted for inquiry/Late filing
PR-2000-067	Foundry Networks	February 19, 2001	Accepted for inquiry
PR-2000-068	Cifelli Systems Corporation	March 1, 2001	Accepted for inquiry
PR-2000-069	Quester Tangent Corporation	March 2, 2001	Not accepted for inquiry/Late filing
PR-2000-070	Lexmark Canada Inc.	March 2, 2001	Accepted for inquiry
PR-2000-071	TAB Canada	March 5, 2001	Accepted for inquiry
PR-2000-072	The Baxter Group Inc.	March 7, 2001	Accepted for inquiry
PR-2000-073	P&L Communications Inc.	March 14, 2001	Accepted for inquiry
PR-2000-074	M.D. Charlton Co. Ltd.	March 16, 2001	Accepted for inquiry
PR-2000-075	M.D. Charlton Co. Ltd.	March 16, 2001	Accepted for inquiry
PR-2000-076	OdySoft Inc.	March 20, 2001	Not accepted for inquiry/Complaint premature
PR-2000-077	Volvo Motor Graders Ltd.	March 23, 2001	Being filed
PR-2000-078	Eurodata Support Services Inc.	March 29, 2001	Being filed

TABLE 2**Procurement Cases Before the Federal Court of Canada Between April 1, 2000, and March 31, 2001**

File No.	Complainant	Applicant	File No./ Status
PR-98-040	Cougar Aviation Limited	Cougar Aviation Limited	A—421—99 Application dismissed
PR-98-047	Novell Canada, Ltd.	Novell Canada, Ltd.	A—440—99 Application allowed
PR-99-001	Novell Canada, Ltd.	Novell Canada, Ltd.	T—1415—99 Application dismissed A—481—99 Application dismissed
PR-99-030	Novell Canada, Ltd.	Novell Canada, Ltd.	A—759—99
PR—99—034	MIL Systems and Fleetway Inc.	Siemens Westinghouse Inc.	A—195—00 Application allowed in part
Pr—99—034	MIL Systems and Fleetway Inc.	PWGSC	A—221—00 Application allowed in part
PR—99—051	Ace/Clear Defense Inc.	National Gallery of Canada	A—481—00
PR—99—053	Rolls-Royce Industries Canada Inc.	Rolls-Royce Industries Canada Inc.	T—2030—00
PR—2000—008 and PR—2000—021	Brookfield Lepage Johnson Controls	Canada Post Corporation	A—624—00 A—628—00 Applications withdrawn
PR—2000—018	X-Wave Solutions Inc.	X-Wave Solutions Inc.	A—668—00
PR—2000—017 and PR—2000—035	Telus Integrated Communications Inc.	Bell Nexxia Inc.	A—747—00
PR—2000—019	Telus Integrated Communications Inc.	Telus Integrated Communications Inc.	T—1297—00
PR—2000—023	K-Lor Contractors Services Ltd.	PWGSC	A—578—00 Application withdrawn
PR—2000—036	E.H. Industries Limited	E.H. Industries Limited	A—696—00 Application dismissed
PR—2000—039	Seimens Westinghouse Inc.	Seimens Westinghouse Inc.	A—203—01

CHAPTER VII

TOWARD THE ELECTRONIC ADMINISTRATIVE RECORD - THE TRIBUNAL'S EXPERIENCE

Introduction

For a number of years, the Tribunal has recognized the value added of information technology in its day-to-day activities. Information technology has had an impact on the operations of all organizational units within the Tribunal. The Tribunal's objective in relying more and more on information technology is to streamline and optimize its procedures and processes. The development of a case-tracking system for appeals of the CCRA's decisions, of a correspondence-tracking system, of a wizard to assist in the preparation of staff reports in Tribunal proceedings and of the Tribunal's Web site are only a few of the Tribunal's information technology initiatives.

The Tribunal also recognized that information technology could bring efficiencies in the area of compilation of the administrative (official) record in its proceedings and in the management of the hearing process. Therefore, it undertook to assess how the automation of the administrative record could improve its operations.

Planning the Migration to the Electronic Record

The Secretariat of the Tribunal, the branch responsible for corporate services, including information technology, was given the task of developing a strategic plan to support the migration of the Tribunal's paper-based administrative record to an electronic record.

Unlike the majority of federal quasi-judicial tribunals and boards that have a single mandate, the Tribunal has a diversified mandate comprising five areas of jurisdiction. The challenge was to develop a strategic plan that could address all the areas of the Tribunal's jurisdiction, recognizing that each area has its own specific requirements. Other challenges associated with this initiative include: the need to process expeditiously substantial volumes of case-related documents received at cyclical points during an inquiry; and the need to make available, in a timely manner, to panel members and staff assigned to a case, incoming case-related documents.

Tribunal's Vision

The strategic plan identified the following three areas where information technology could help in the management of case-related information:

**Laying Down the
Ground Work**

- Compilation of the administrative record
- Automation of the activities relating to the hearing stage of an inquiry
- Electronic communications with parties during a proceeding

The strategic plan recognized that, even though these three areas relate to activities that take place in the context of an inquiry, they could not be addressed concurrently. They would have to be addressed using an incremental approach.

The Tribunal's vision for the electronic record was ambitious. The Tribunal was looking for more than a tracking system for documents making up the administrative record. Its objective was to make the electronic record fully searchable, to use it in the hearing room to allow better management of available hearing time and to make it available to parties and counsel participating in an inquiry.

It was recognized early in the process that substantial time would be needed in the planning stage. Not only did it entail identifying the required information technology infrastructure, but also having the Registrar Office staff with the proper skills set, documenting Tribunal processes and identifying and selecting the most appropriate application to support the initiative.

Having defined the Tribunal's vision for the electronic record, it was important to ensure that this vision was shared by Tribunal members, senior management and staff. To this end, a benefits realization study was commissioned from a consulting firm. The purpose of the study was to identify, through a series of individual interviews with members, senior management and staff, the benefits of migrating to an electronic record. The findings of these interviews were reviewed by senior management to acquire a better understanding of the expectations and benefits identified and to validate them.

There was also a need to better understand how case-related documents and information travels within the Tribunal, i.e. where do documents and information originate, how are they processed and distributed, what are the end uses. A consulting firm was given the task of analyzing the flow of information. The results of this study were of assistance to the Tribunal in validating its information flows. The resulting report is also used as a training tool for Registrar Office staff responsible for the compilation of the administrative record.

At this stage of the project, the operational requirements of the Registrar Office, in the context of the migration to an electronic administrative record, were identified and assessed as to how they would affect the Tribunal's network infrastructure.

Selecting the RDIMS Application

Finding the right application for the Tribunal's electronic record initiative proved to be a difficult undertaking. The Tribunal considered a number of possible applications. Some of the problems encountered were: the lack of interest from a potential supplier; the lack of a bilingual capability of some applications; the fact that one application was paper based, while the Tribunal was looking for an electronic solution for the filing of documents; and the cost element.

The Tribunal finally selected the RDIMS (Records, Document and Information Management System) as a possible solution for its initiative. In July 1998, the Government of Canada awarded a contract for the implementation of the RDIMS to the CGI Group, an information technology consulting group. The goals of this initiative were twofold:

- Take advantage of existing technology to modernize records and information management functions and, in so doing, improve the cost effectiveness of service delivery to the public and of internal operations.
- Standardize records and information management practices, software and systems to facilitate the seamless exchange of information between federal departments.

The RDIMS is made up of an integrated suite of commercial off-the-shelf software products that provide key components for a modern electronic workplace. The suite includes:

- a documents module,
- a records management module,
- a full text indexing and search module,
- a document routing module,
- an imaging module, and
- a reporting module

The Tribunal's interest in the RDIMS application was not the traditional records management function, but rather the imaging capability that it offered and the possibility of tailoring the application to meet the Tribunal's information requirements.

Experimenting with the Electronic Record - The RDIMS Pilot Project

The Tribunal decided that it would use the RDIMS application on a pilot project basis and that the project would involve the Tribunal's jurisdiction with regard to inquiries on dumping and subsidizing complaints, the jurisdiction that generates the most extensive administrative record (in excess of 30,000 pages). It was also decided that the pilot project would consist in compiling the electronic record of a recently completed dumping inquiry. Staff assigned to that inquiry would use the application to validate its functionalities.

The pilot project was launched on May 29, 2000, and took four months to complete. The objectives were to:

- determine if the Tribunal's case management capability could be increased to support the deliberative and decision-making process;
- ascertain the feasibility of implementing an electronic document management system relying primarily on imaging technology;
- test the capability of the RDIMS to provide panel members and staff assigned to a case with timely access to a wide spectrum of documents making up the administrative record;
- test the capability of the RDIMS to carry out effective, exhaustive and timely research within the administrative record;
- test the document routing module to ensure that it could provide timely access to documents making up the administrative record; and
- assess the capability of the RDIMS to provide proper access controls and recoverability thereby ensuring adequate protection of the Tribunal's information holdings.

The following functions of the RDIMS application were successfully tested: scanning; digitization (optical character recognition [OCR]); data capture; storage (electronic repository); security; access to the information; and reporting. However, the following functions still required enhancements and further research: search; annotation; and workflow. This last function was not robust enough to meet the Tribunal's requirement for notification of panel members and staff assigned to a case.

A number of lessons were also learned:

- The Tribunal needs to better define its requirements.
- The digitization function is not reliable in terms of quality (error rate). As a result, there is a need for the Tribunal to obtain electronic input documents from parties to ensure 100 percent accuracy.
- It will be difficult, if not impossible, to identify a search engine comparable to Folio Views, which is presently used by the Tribunal to search the transcript of hearings.
- The application must allow the distribution of case-related information to be done more rapidly.
- There is a need to improve the user friendliness of the application.

ToolKit Pilot Project

The Tribunal came to the conclusion that the RDIMS application lacked the necessary flexibility to make it a viable option for the Tribunal. Furthermore, the lack of user friendliness of the RDIMS was of concern to the Tribunal.

The Tribunal decided that it would pursue its efforts to identify an application that would meet its operational requirements, as it recognized the benefits to be derived from a fully operational electronic administrative record.

In September 2000, the Tribunal decided to carry out a second pilot project with a package called ToolKit, which uses the Filemaker Pro application. The ToolKit package was attractive to the Tribunal because it was developed by people with an understanding and knowledge of a court environment, it has a bilingual capability, and there is local technical support for the product.

For its second pilot project, the Tribunal maintained the same overall objectives that were established for the RDIMS pilot project. However, the pilot would be conducted in parallel with an actual dumping inquiry over a four-month period. The *Grain Corn* inquiry (NQ-2000-005) was selected. Panel members and staff would be given the option of working with the paper and/or electronic administrative record.

Based on the lessons learned from the first pilot project, the Tribunal recognized that it needed to improve its requirements definition. A business process analyst was recruited to act as the intermediary between the information technology specialists and the users of the application, to assist with the identification of the Tribunal's operational requirements, to provide training and assistance to users and to work with the application's developer to define and implement the necessary enhancements. The Tribunal also recognized that it could not rely on the OCR application because the poor quality of the resulting documents and the limitation that this placed on the search capability. For this reason, it requested that parties to the inquiry file their submissions and responses to various questionnaires in electronic format.

The ToolKit is made up of six modules:

- Documents
- Transcripts
- Work notes
- Participants
- Subjects
- Names

**Results of the Toolkit
Pilot Project**

The documents module allows the user to search the administrative record in its entirety using one of two tools: the document quick finder or the search screen, which allows for a more in-depth search.

The transcripts module offers the possibility of searching the transcript of a hearing in two modes: Folio Views or PDF. Over the years, the Tribunal has refined the search capabilities available through Folio Views to meet its specialized requirements. On the ToolKit, Folio Views is only available to search the transcript, while the Adobe dictionary can be used to search the entire administrative record, including the transcript.

The work notes module is presently under construction. It is expected to allow users to save notes and annotations on specific documents. It will also provide the possibility of sharing these notes and annotations with other staff assigned to a case.

The participants module provides access to relevant information on parties and counsel participating in a case. An interesting feature of the module is the access to the actual notices of participation, notices of representation and declarations and undertakings filed with the Tribunal by parties and counsel.

The subjects module allows the identification of specific subjects to be tracked throughout the entire record.

The names module allows the user to keep a directory of key people or other contacts in a case.

As of the end of fiscal year 2000-2001, the pilot project was still underway. Nevertheless, there are a number of preliminary observations that can be drawn:

- The ToolKit provides ample flexibility to meet the specific operational requirements of the Tribunal. The ease with which enhancements can be made and the availability of the application's developer are most impressive.
- The recruitment of a business process analyst has proven to be a key ingredient in the success already achieved. It has allowed the Tribunal to properly define its requirements.
- The ToolKit has quickly gained the acceptance of users. It is fair to say that the ToolKit is a user-friendly package.

The Tribunal's decision to request that parties file electronic versions of their submissions was justified. The time required to digitize electronic documents is insignificant compared to the time required to digitize scanned documents. More

Future of the Electronic Record at the Tribunal

importantly, the Tribunal's decision has significantly improved the quality of the application's search function.

The Tribunal will carry out an in-depth review of the ToolKit pilot project. The evaluation should be completed by the end of May 2001. If the results are positive, the Tribunal will undertake to make the electronic administrative record an integral part of its operations by using a phased-in approach.

Phase I will involve the migration from a pilot project mode to an operational mode. This migration will apply to SIMA cases only. It will involve the development of a guideline governing the filing of electronic documents with the Tribunal.

Phase II will involve making the electronic administrative record available and accessible in the hearing room.

Phase III will involve making the ToolKit available to counsel and parties participating in SIMA proceedings.

Phase IV will focus on the implementation of the ToolKit in other areas of the Tribunal's jurisdiction, i.e. procurement, appeals and textile cases.

Phase V will be concerned with the installation of a secured electronic communications network between the Tribunal and counsel offices to improve the timeliness of access to the Tribunal's administrative record.

Phase VI will focus on the implementation of a platform that will allow the electronic filing of responses to questionnaires.

Conclusion

Over the years, the Tribunal has supported the move towards the greater use of information technology as a means of improving service delivery. The Tribunal is convinced that the electronic administrative record will help to streamline its operations and facilitate the work of all participants in a Tribunal proceeding. The initiative has the potential to enhance service delivery to stakeholders and is therefore in line with the spirit of the Government On-line initiative.

TRIBUNAL PUBLICATIONS ISSUED DURING THE FISCAL YEAR

April 2000	Canadian International Trade Tribunal Rules Guideline on Interim Reviews Guideline on Preliminary Injury Inquiries Guideline on Public Interest Inquiries
May 2000	Annual Report for the Fiscal Year Ending March 31, 2000
June 2000	Bulletin - Vol. 12 No. 1
August 2000	Draft Guideline on Expiry Reviews
September 2000	Bulletin - Vol. 12 No. 2
December 2000	Bulletin - Vol. 12 No. 3
January 2001	Textile Reference: Annual Status Report
March 2001	Bulletin - Vol. 12 No. 4

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