

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2007**

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June 11, 2007

The Honourable Jim Flaherty, 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 Tribunal's annual report for the fiscal year ending March 31, 2007.

Yours sincerely,

Pierre Gosselin
Chairperson

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CHAPTER I

HIGHLIGHTS

Dumping and Subsidizing Inquiries and Reviews

In the fiscal year, the Canadian International Trade Tribunal (the Tribunal) issued four preliminary determinations of injury under subsection 37.1(1) of the *Special Import Measures Act (SIMA)*. The Tribunal also issued four findings following injury inquiries under section 42 and one order following an interim review pursuant to section 76.01. The Tribunal issued two orders following expiry reviews under section 76.03. At the end of the fiscal year, one expiry review and one interim review were in progress. A public interest inquiry and a request for an interim review were also being considered.

Appeals

The Tribunal issued decisions on 36 appeals from decisions of the Canada Border Services Agency (CBSA) and the Minister of National Revenue made under the *Customs Act* and the *Excise Tax Act*. In addition, the Tribunal issued a decision that had been remanded to it.

Procurement Review

In 1994, following the implementation of the *North American Free Trade Agreement (NAFTA)*, the Government mandated the Tribunal as its reviewing body for bid challenges. The mandate was expanded with inclusion of a bid challenge mechanism in both the World Trade Organization (WTO) *Agreement on Government Procurement (AGP)* and Canada's own *Agreement on Internal Trade (AIT)*.

The *Canada-United States Free Trade Agreement*, and its successor, *NAFTA*, requires that Canada adopt and maintain bid challenge procedures for procurement in order to promote fair, open and impartial procurement procedures. The formal process of procurement review at the Tribunal allows Canada to meet these obligations, as well as similar ones under the *AGP* and the *AIT*. For procurements covered by these agreements, the Tribunal, in line with the objectives of the new *Federal Accountability Act*, has provided suppliers with an effective means of redress whenever they felt that procurement actions were not conducted in a fair, open and transparent manner.

The Tribunal received 53 procurement complaints during the fiscal year. The Tribunal issued 19 determinations of its findings and recommendations. Seven of these determinations related to cases that were in progress at the end of fiscal year 2005-2006. One determination was remanded to the Tribunal.

In 2006-2007, the Department of Public Works and Government Services (PWGSC) alone issued approximately 20,903 contracts valued at between \$25,000 and \$300 million, for a total value of \$10.3 billion. The 53 complaints received in the fiscal year pertained to 51 different contracts, representing less than 1 percent of the total number of contracts issued by PWGSC in 2006-2007. Although complaints represent only a small percentage of the procurements performed by the federal government, that small number belies a significant impact on the integrity of government procurement through disciplinary and instructional effects of complaints found valid.

Safeguard Inquiries

The Tribunal terminated an inquiry into complaints with respect to apparel products, as it found that the complainants did not have the required standing under the *Canadian International Trade Tribunal Act (CITT Act)* and that it was therefore without jurisdiction to entertain or further assess the complaints.

Economic, Trade and Tariff References

The Tribunal completed one tariff reference during the fiscal year. On October 27, 2005, the Tribunal was directed by the Minister of Finance to inquire into and report on the availability from Canadian production of apparel fabrics classified under 12 tariff items in the *Customs Tariff*. On November 23, 2005, the Minister of Finance further directed the Tribunal, where appropriate, in identifying new eight-digit tariff items, to ensure that the scope of the product descriptions reflects market realities. In April 2006, the Tribunal recommended to the Minister of Finance that duties be eliminated on 4 of the 12 tariff items. There were no references in progress at year-end.

Textile Reference

In 1994, the Minister of Finance established a standing reference that mandated the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and to make recommendations to the Minister of Finance. During the fiscal year, the Tribunal issued one report to the Minister of Finance concerning one request for tariff relief. There was one case in progress at the end of the fiscal year.

Access to Tribunal Notices, Decisions and Publications

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 offers a subscriber alert service that notifies subscribers of each new posting on the Tribunal's Web site. Subscribers can choose their areas of interest. This service is available without charge.

Tribunal notices and decisions are also published in the *Canada Gazette*. Those relating to procurement complaints are also published on MERX (Canada's electronic tendering service).

Electronic Filing

In July 2006, the Tribunal launched a new **Secure E-filing Service**. The service allows parties to file electronically both public and confidential documents with the Tribunal. All transmitted documents using the service are encrypted to ensure their confidentiality. The **Secure E-filing Service** can be accessed on the Tribunal's Web site (www.citt-tcce.gc.ca). It utilizes the Government of Canada's epass system, which allows the secure transmission of business confidential information.

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.

Caseload

	Cases Brought Forward From Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated/ Dismissed	Cases Outstanding (March 31, 2007)
SIMA Activities						
Preliminary injury inquiries	1	3	4	4	-	-
Inquiries	1	4	5	4	-	1
Public interest inquiries	-	1	1	-	-	1
Requests for interim reviews	-	6	6	1	3	2
Expiries	-	2	2	2	-	-
Expiry reviews	2	1	3	2	-	1
Safeguards						
Global	-	-	-	-	-	-
Imports from China	1	-	1	1	-	-
Appeals						
Extensions of time						
<i>Customs Act</i>	3	3	6	5	1	-
<i>Excise Tax Act</i>	-	1	1	1	-	-
Appeals						
<i>Customs Act</i>	50	57	107	29*	15	63
<i>Excise Tax Act</i>	67	5	72	8	11	53
<i>SIMA</i>	-	1	1	-	1	-
Economic, Trade, Tariff References and Standing Textile Reference						
Economic, trade and tariff references	1	-	1	1	-	-
Standing textile reference						
Requests for tariff relief	-	2	2	1	-	1
Expiries	-	-	-	-	-	-
Reviews	-	-	-	-	-	-
Requests for reconsideration	-	-	-	-	-	-
Procurement Review Activities						
Complaints	7	54*	61	19*	33	9

*Includes one case that was remanded by the Federal Court of Appeal.

CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES

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*, the *Canadian International Trade Tribunal Procurement Inquiry Regulations* and the *Canadian International Trade Tribunal Rules (Rules)*.

Mandate

The Tribunal's primary mandate is to:

- inquire into whether dumped or subsidized imports have caused, or are threatening to cause, injury to a domestic industry;
- hear appeals from decisions of the CBSA made under the *Customs Act* and *SIMA* or of the Minister of National Revenue under the *Excise Tax Act*;
- inquire into complaints by potential suppliers concerning federal government procurement that is covered by *NAFTA*, the *AIT* and the *AGP*;
- investigate requests from Canadian producers for tariff relief on imported textile inputs used in production operations and to make recommendations to the Minister of Finance on the relative benefits to Canada of the requests; and
- inquire into complaints by domestic producers that increased imports from all sources are causing, or threatening to cause, serious injury to domestic producers;
- conduct safeguard inquiries with respect to increased imports from China;
- inquire into 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.

Section	Authority
<i>CITT Act</i>	
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
30.21 to 30.26	Safeguard inquires concerning market disruption, trade diversion and market disruption extension regarding goods originating in China at the request of either the government or a domestic producer
<i>SIMA</i>	
33 and 37	Advice regarding reference to the Tribunal
34(2) and 35(3)	Preliminary injury 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 Appeal or a binational panel)
45	Public interest
46	Advice to the CBSA
61	Appeals of re-determinations of the CBSA 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 CBSA or other interested persons
76.01	Interim reviews of orders by the Tribunal
76.02	Reviews of orders by the 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
<i>Customs Act</i>	
60.2	Application for an extension of time to request a re-determination or a further re-determination
67	Appeals of decisions of the CBSA concerning value for duty and origin and classification of imported goods
67.1	Requests for time extension to file notices of appeal
68	Appeals to the Federal Court of Appeal
70	References of the CBSA relating to the tariff classification or value for duty of goods
<i>Excise Tax Act</i>	
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
<i>Energy Administration Act</i>	
13	Declarations concerning the amount of oil export charge

Method of Operation

In carrying out most of its inquiry responsibilities, the Tribunal conducts 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

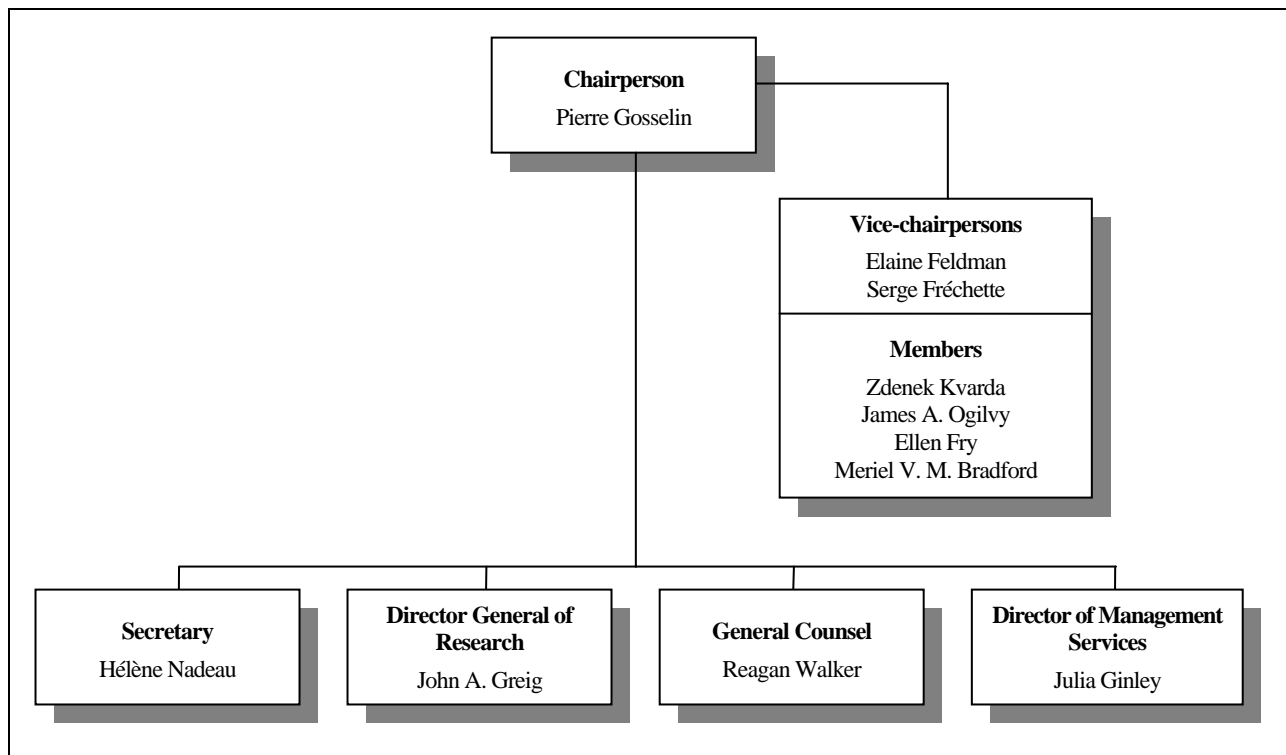
procedures similar to those of a court of law; however, to facilitate access, these are not as formal or strict. The *CITT Act* states that hearings, generally conducted by a panel of three members, should be carried out as “informally and expeditiously” as the circumstances and considerations of fairness 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. Protecting commercially sensitive information against unauthorized disclosure has been, and continues to be, of paramount importance to the Tribunal.

Membership

The Tribunal may be composed of nine full-time members, including a Chairperson and two Vice-chairpersons. All are appointed by the Governor in Council for a term of up to five years that is renewable once. 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

There are currently 7 Tribunal members assisted by a permanent staff of 87 persons. Its principal officers are the Secretary, responsible for relations with the public and parties, information management and the court registry functions of the Tribunal; the Director General of 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; the General Counsel, responsible for the provision of legal services; and the Director of Management Services, responsible for corporate management.



Consultations

Through the Bench and Bar Committee, the Tribunal provides a forum to promote discussion on issues of importance. The committee includes representatives from the CBA and the trade consulting community who appear before the Tribunal. The Tribunal also consults with counsel, 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.

Judicial Reviews and Appeals to the Federal Court of Appeal

Any person affected by Tribunal findings or orders under section 43, 44 or 76 of *SIMA* can request a judicial review by the Federal Court of Appeal, for instance, on grounds of alleged denial of natural justice and error of fact or law. Similarly, any person affected by Tribunal procurement orders or determinations under the *CITT Act* can request a judicial review by the Federal Court of Appeal. Lastly, Tribunal appeal orders and decisions, under the *Customs Act*, *SIMA* or the *Excise Tax Act*, can be appealed to the Federal Court of Appeal or the Federal Court.

Judicial Review by NAFTA Binational Panel

Tribunal findings or orders under section 43, 44 or 76 of *SIMA* involving goods from the United States and Mexico may be reviewed by a *NAFTA* binational panel.

WTO Dispute Resolution

Governments that are members of the WTO may challenge Tribunal injury findings or orders in dumping and countervailing duty cases before the WTO dispute settlement bodies. This is initiated by intergovernmental consultations.

CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Process

Under *SIMA*, the CBSA may impose anti-dumping and countervailing duties if 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 CBSA. The Tribunal determines whether such dumping or subsidizing has caused “injury” or “retardation” or is threatening to cause 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 CBSA. If the CBSA 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 CBSA 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, it does not issue questionnaires or hold a public hearing. The Tribunal completes its inquiry within 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 CBSA continues the dumping or subsidizing investigation. If there is no reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, the Tribunal terminates the inquiry, and the CBSA terminates the dumping or subsidizing investigation. The Tribunal issues reasons no later than 15 days after its determination.

Preliminary Injury Inquiries Completed in the Fiscal Year

The Tribunal completed four preliminary injury inquiries in the fiscal year. There were no preliminary injury inquiries in progress at the end of the fiscal year. The following table summarizes the Tribunal's preliminary injury inquiry activities during the fiscal year.

Preliminary Injury Inquiry No.	Product	Country	Date of Determination	Determination
PI-2005-002	Cross-linked polyethylene tubing	United States	May 2, 2006	Injury
PI-2006-001	Copper pipe fittings	United States, Korea and China	August 8, 2006	Injury
PI-2006-002	Copper rod	Brazil and Russian Federation	October 30, 2006	Injury
PI-2006-003	Disposable adult incontinence briefs	France	January 22, 2007	Injury

Advice Given Under Section 37 of SIMA

When the CBSA decides not to initiate an investigation because the evidence does not disclose a reasonable indication that the dumping or subsidizing of the goods has caused injury or retardation, or threatens to cause injury, the CBSA 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 CBSA discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation or is threatening to cause 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 CBSA 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 CBSA makes a preliminary determination of dumping or subsidizing, the Tribunal commences a final injury inquiry under section 42 of *SIMA*. The CBSA may levy provisional duties on imports from the date of the preliminary determination. The CBSA continues its 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 producers, importers, purchasers and 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 injury or retardation or threat of injury to a domestic industry. The report becomes part of the case record and is 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 injury or retardation or is threatening to cause 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 once the CBSA has made 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 injury or retardation or is threatening to cause injury to a domestic industry. Importers and exporters challenge the domestic producers' case. After cross-examination by parties and questioning 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. Under certain circumstances, parties may seek exclusions from the effects of a Tribunal finding.

The Tribunal must issue its finding within 120 days from the date of the preliminary determination of dumping and/or subsidizing by the CBSA. It has an additional 15 days to issue a statement of reasons supporting its finding. A Tribunal finding of injury or retardation or threat of injury to a domestic industry is the legal authority for the CBSA to impose anti-dumping or countervailing duties.

Final Injury Inquiries Completed in the Fiscal Year

The Tribunal completed four final injury inquiries in the fiscal year. They concerned *Unprocessed Grain Corn* (NQ-2005-001), *Cross-linked Polyethylene Tubing* (NQ-2006-001), *Copper Pipe Fittings* (NQ-2006-002) and *Copper Rod* (NQ-2006-003). In 2005, the estimated values of the Canadian market for the former three goods were, respectively, \$921 million, \$25 million and \$32 million. The value of the market for copper rod cannot be disclosed because of confidentiality restrictions.

NQ-2005-001—Unprocessed Grain Corn

This inquiry concerned dumped and subsidized imports from the United States.

The Tribunal found that the domestic industry had not been materially injured by the dumped and subsidized goods, concluding that the decline in the selling prices of domestic grain corn was essentially attributable to the appreciation of the Canadian dollar and other factors unrelated to the imports of U.S. grain. As for the threat of injury, the Tribunal did not find that there would be increased imports of grain corn into Canada in the imminent and foreseeable future.

NQ-2006-001—Cross-linked Polyethylene (PEX) Tubing

This inquiry concerned dumped imports from the United States.

The Tribunal found that the domestic industry had not experienced any material injury, whether due to the dumped goods or to any other factors. The Tribunal also found that dumped goods were not threatening to cause material injury to the domestic industry and that there was no convincing evidence that the U.S. PEX tubing industry, in general, would experience significant pressure in the near term to increase exports to Canada.

NQ-2006-002—Copper Pipe Fittings

This inquiry concerned dumped imports from the United States and South Korea and dumped and subsidized imports from China.

The Tribunal found that the domestic industry was materially injured in terms of declines in production, sales from domestic production, market share, profitability, capacity utilization and employment by the dumped imports from the United States and South Korea, and the dumped and subsidized imports from China.

NQ-2006-003—Copper Rod

This inquiry concerned dumped and subsidized imports from Brazil and dumped imports from the Russian Federation.

The Tribunal found that the domestic industry had not been materially injured by the dumped and subsidized goods, even though it recognized that the dumped and subsidized goods had caused a certain level of price depression. With regard to threat of injury, the Tribunal found that the dumped and subsidized goods were not entering Canada at prices likely to have a negative effect on domestic prices and were not likely to stimulate demand for further imports of the subject goods.

Final Injury Inquiries in Progress at the End of the Fiscal Year

There was one inquiry in progress at the end of the fiscal year, *Disposable Adult Incontinence Briefs* (NQ-2006-004), which concerns dumped imports from France.

The following table summarizes the Tribunal's final injury inquiry activities during the fiscal year.

Inquiry No.	Product	Country	Date of Finding	Finding
NQ-2005-001	Unprocessed grain corn	United States	April 18, 2006	No injury
NQ-2006-001	Cross-linked polyethylene tubing	United States	September 29, 2006	No injury
NQ-2006-002	Copper pipe fittings	United States, Korea and China	February 19, 2007	Injury
NQ-2006-003	Copper rod	Brazil and Russian Federation	March 28, 2007	No injury
NQ-2006-004	Disposable adult incontinence briefs	France		In progress

Public Interest Inquiry Under Section 45 of SIMA

Following a finding of injury, the Tribunal notifies all interested parties that any submissions requesting a public interest inquiry must be filed within 45 days. It may initiate, either after a request from an interested person or on its own initiative, a public interest inquiry following a finding of injury caused by dumped or subsidized imports. It may decide that there are reasonable grounds to consider that the imposition of part or all of the duties may not be in the public interest. It 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 one request for a public interest inquiry during the fiscal year following its finding in Inquiry No. NQ-2006-002, *Copper Pipe Fittings*. At the end of the fiscal year, the Tribunal had not determined whether to initiate a public interest inquiry in response to the request.

Importer Ruling

Under section 89 of *SIMA*, the CBSA 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 CBSA, it may reconsider its original finding of injury under section 91.

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

Requests for Interim Reviews

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 CBSA or any other person or government (section 76.01 of *SIMA*). It 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 new facts have arisen or that there has been a 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 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.

Interim Reviews Completed in the Fiscal Year

The Tribunal received six requests for interim reviews during the fiscal year. Three requests were withdrawn.

The Tribunal ruled on two requests for interim reviews, both of which were received in the fiscal year. Regarding Interim Review No. RD-2006-003, *Stainless Steel Wire*, the Tribunal determined that an interim review was not warranted. Regarding Interim Review No. RD-2006-005, *Fasteners*, the Tribunal determined that an interim review was warranted.

Interim Reviews in Progress at the End of the Fiscal Year

There was one interim review in progress and one request for interim review under consideration at the end of the fiscal year.

The following table summarizes the Tribunal's interim review activities during the fiscal year.

Request No.	Product	Country	Date of Order	Order
RD-2006-001	Stainless steel wire	Korea, Switzerland, United States and India		Withdrawn
RD-2006-002	Stainless steel wire	Korea, Switzerland, United States and India		Withdrawn
RD-2006-003	Stainless steel wire	Korea, Switzerland, United States and India	December 20, 2006	No review
RD-2006-004	Xanthates	China		Withdrawn
RD-2006-005	Fasteners	China and Chinese Taipei		Review warranted/In progress
RD-2006-006	Nipples, couplings and fittings	China		Under consideration

Expiry Reviews

Subsection 76.03(1) of *SIMA* provides that a finding or order expires after five years, unless an expiry review has been initiated. No 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 CBSA 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: LE-2006-001 (*Waterproof Rubber Footwear*); LE-2006-002 (*Bicycles and Frames*); and LE-2006-003 (*Hot-rolled Carbon Steel Plate*).

In Expiry No. LE-2006-001, *Waterproof Rubber Footwear*, the Tribunal was not satisfied that a review was warranted of its order made on October 18, 2002, in Expiry Review No. RR-2001-005 (as amended by its order made on August 18, 2005, in Interim Review No. RD-2004-008), continuing, without amendment, its order made on October 20, 1997, in Review No. RR-97-001, continuing, with amendment, its order made on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82. The order is scheduled to expire on October 17, 2007.

In Expiry No. LE-2005-005, *Leather Footwear*, which was commenced in the previous fiscal year, the Tribunal was not satisfied that a review of its finding made on December 27, 2001, in Inquiry No. NQ-2001-003 was warranted. The finding expired on December 26, 2006.

Expiry No. LE-2006-003, *Hot-rolled Carbon Steel Plate*, was in progress at the end of the fiscal year.

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 CBSA to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the finding or order expires. If the CBSA determines that such 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 CBSA determines that such 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.

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 a finding or order is continued, it remains in force for a further five years, unless an interim 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.

Expiry Reviews Completed in the Fiscal Year

In the fiscal year, the Tribunal completed two expiry reviews, both of which had been commenced in the previous fiscal year.

On May 1, 2006, the Tribunal rescinded its finding in *Garlic* (RR-2005-001) respecting dumped imports of fresh or frozen garlic from China and Vietnam. On March 19, 2007, the Tribunal rescinded its order in *Garlic* (RR-2005-001) respecting dumped imports of fresh garlic from China.

On August 16, 2006, the Tribunal continued its finding in *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (RR-2005-002) respecting dumped imports from Brazil, China, Chinese Taipei, India, South Africa and Ukraine and subsidized imports from India. The Tribunal rescinded its finding respecting dumped imports from Bulgaria, the former Yugoslav Republic of Macedonia, and Serbia and Montenegro (formerly the Federal Republic of Yugoslavia).

Expiry Reviews in Progress at the End of the Fiscal Year

There was one expiry review in progress at the end of the fiscal year.

Expiry Review No. RR-2006-001 is a review of the order in *Bicycles and Frames* respecting dumped imports from China, the Tribunal having determined, in Expiry No. LE-2006-002, that an expiry review was warranted.

The following table summarizes the Tribunal's expiry review activities during the fiscal year.

Review No.	Product	Country	Date of Order	Order
RR-2005-001	Garlic	China and Vietnam	May 1, 2006 March 19, 2007	Finding rescinded Order rescinded
RR-2005-002	Flat hot-rolled carbon and alloy steel sheet and strip	Brazil, Bulgaria, China, Chinese Taipei, India, former Yugoslav Republic of Macedonia, Serbia and Montenegro (formerly the Federal Republic of Yugoslavia), South Africa and Ukraine	August 16, 2006	Finding continued for Brazil, China, Chinese Taipei, India, South Africa and Ukraine Finding rescinded for Bulgaria, former Yugoslav Republic of Macedonia, and Serbia and Montenegro (formerly the Federal Republic of Yugoslavia)
LE-2005-005	Leather footwear	China	April 12, 2006	Review not warranted
LE-2006-001	Waterproof rubber footwear	China	January 31, 2007	Review not warranted
RR-2006-001	Bicycles and frames	Chinese Taipei and China		In progress

Judicial or Panel Review of SIMA Decisions

On March 21, 2006, the Federal Court of Appeal remanded the Tribunal's decision to deny the requests for product exclusions for patented stainless steel screws submitted by GRK Fasteners in Inquiry No. NQ-2004-005. On September 26, 2006, the Tribunal concluded that granting the exclusions would threaten to cause injury to the domestic industry and, therefore, denied the requests.

The following table lists the Tribunal's decisions under section 43, 44 or 76 of *SIMA* that were before the Federal Court of Appeal in the fiscal year.

Case No.	Product	Country of Origin	File No./Status
NQ-2004-002	Fuel tanks	China and Chinese Taipei	A—527—04 Application dismissed (May 24, 2006)
NQ-2004-005R	Fasteners	China and Chinese Taipei	A—468—06
NQ-2005-001	Unprocessed grain corn	United States	A—267—06

WTO Dispute Resolution

There are no Tribunal findings or orders before the dispute settlement bodies of the WTO.

International Assistance

As a major player in Canada's trade remedies system, the Tribunal is often called upon to provide assistance to countries seeking to establish trade remedy systems or to countries negotiating to become members of the WTO. The Tribunal also participates in technical exchange meetings with other anti-dumping authorities. In 2006-2007, the Tribunal hosted delegations from Morocco, the United States and the European Union. In addition, Tribunal staff provided training in Morocco and participated in a technical exchange in Australia.

SIMA Findings and Orders in Force as of March 31, 2007

Review No. or Inquiry No.	Date of Decision	Product	Country	Related Decision No. and Date
NQ-2002-003	March 4, 2003	Xanthates	China	
NQ-2002-004	July 16, 2003	Carbon steel pipe nipples, threaded couplings and adaptor fittings	China	
NQ-2003-001	December 23, 2003	Structural tubing	Korea, South Africa and Turkey	
NQ-2003-002	January 9, 2004	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	Bulgaria, Czech Republic and Romania	
NQ-2003-003	June 18, 2004	Wood venetian blinds and slats	China and Mexico	
NQ-2004-001	July 30, 2004	Stainless steel wire	Korea, Switzerland, United States and India	
NQ-2004-005	January 7, 2005	Fasteners	China and Chinese Taipei	
NQ-2004-006	June 16, 2005	Laminate flooring	China and France	
NQ-2006-002	February 19, 2007	Copper Pipe Fittings	United States, Korea and China	
RR-2001-005	October 18, 2002	Waterproof rubber footwear	China	RR-97-001 (October 20, 1997) RR-92-001 (October 21, 1992) R-7-87 (October 22, 1987) ADT-2-82 (April 23, 1982) ADT-4-79 (May 25, 1979)
RR-2001-006	January 10, 2003	Hot-rolled carbon steel plate	China, South Africa and Russian Federation	NQ-97-001 (October 27, 1997)
RR-2002-001	December 9, 2002	Bicycles and frames	Chinese Taipei and China	RR-97-003 (December 10, 1997) NQ-92-002 (December 11, 1992)
RR-2004-006	September 12, 2005	Whole potatoes	United States	RR-99-005 (September 13, 2000) RR-94-007 (September 14, 1995) RR-89-010 (September 14, 1990) CIT-16-85 (April 18, 1986) ADT-4-84 (June 4, 1984)
RR-2004-007	November 2, 2005	Refined sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	RR-99-006 (November 3, 2000) NQ-95-002 (November 6, 1995)
RR-2004-008	December 7, 2005	Waterproof footwear and bottoms	China	NQ-2000-004 (December 8, 2000)
RR-2005-002	August 16, 2006	Flat hot-rolled carbon and alloy steel sheet and strip	Brazil, China, Chinese Taipei, India, South Africa and Ukraine	NQ-2001-001 (August 17, 2001)

Note: For complete product descriptions, refer to the most recent finding or order.

CHAPTER IV

APPEALS

Introduction

The Tribunal hears appeals from decisions of the CBSA under the *Customs Act* and *SIMA* or of the Minister of National Revenue under the *Excise Tax Act*. Appeals under the *Customs Act* relate to the origin, tariff classification, value for duty or marking of goods imported into Canada. Appeals under *SIMA* concern the application, to imported goods, of a Tribunal finding or order concerning dumping or subsidizing and the normal value, export price or subsidy of imported goods. Under the *Excise Tax Act*, a person may appeal the Minister of National Revenue's decision 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

Under the *Rules*, 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 of National Revenue or the CBSA (the respondent), and states why the appellant believes that the respondent's decision is incorrect. A copy of the brief must also be given to the respondent.

The respondent must also comply with time and procedural constraints. Normally, within 60 days after having received the appellant's brief, the respondent must provide the Tribunal and the appellant with a brief setting forth the respondent's position. The Secretary of the Tribunal then contacts both parties in order to schedule a hearing. Hearings are generally conducted before Tribunal members in public. 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 counsel. The respondent is generally represented by counsel from the Department of Justice.

Hearing procedures are designed to ensure that the appellant and the respondent are given a full opportunity to make their cases. They also enable the Tribunal to have the best information possible to make a decision. As in a court, the appellant and the respondent can call witnesses, and these witnesses are

questioned under oath 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 positions.

The Tribunal, on its own initiative or at the request of the appellant or the respondent, may decide to hold a hearing by way of written submissions. In that case, it publishes a notice of the hearing in the *Canada Gazette* to allow other interested persons to participate.

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 Appeal or the Federal Court.

Extensions of Time

Under section 60.2 of the *Customs Act*, a person may apply to the Tribunal for an extension of time to file a request for a re-determination or a further re-determination with the President of the CBSA. Such an application may be granted by the Tribunal after either the President has refused an application under section 60.1 or 90 days have elapsed after the application was made and the person has not been notified of the President’s decision. Under section 67.1, a person may make an application to the Tribunal for an extension of time within which to file a notice of appeal with the Tribunal. During the fiscal year, the Tribunal issued five orders under the *Customs Act*, three of which granted extensions of time. Two requests were denied, and one request was closed. There were no requests under the *Customs Act* that were outstanding at the end of the fiscal year.

Under section 81.32 of the *Excise Tax Act*, a person may apply to the Tribunal for an extension of time to serve a notice of objection with the Minister of National Revenue under section 81.15 or 81.17 or to file a notice of appeal with the Tribunal under section 81.19. During the fiscal year, the Tribunal issued one order under the *Excise Tax Act* granting an extension of time. There were no requests under the *Excise Tax Act* that were outstanding at the end of the fiscal year.

Appeals Considered

During the fiscal year, the Tribunal heard 30 appeals, of which 27 related to the *Customs Act* and 3 to the *Excise Tax Act*. Decisions were issued in 37 cases, which included a decision that had been remanded to the Tribunal.

Act	Allowed	Allowed in Part	Dismissed	Total
<i>Customs Act</i>	4	4	21	29
<i>Excise Tax Act</i>	-	-	8	8

The following table lists the appeal decisions rendered in the fiscal year.

Appeal No.	Appellant	Date of Decision	Decision
Customs Act			
AP-2003-045	Norsk Fitness Products Inc.	April 6, 2006	Appeal allowed in part
AP-2003-010R	Agri-Pack	May 15, 2006	Appeal allowed in part
AP-2005-009	Gordon Schebek	May 18, 2006	Appeal allowed
AP-2005-019	Bauer Nike Hockey Inc.	May 18, 2006	Appeal allowed
AP-2004-061	Franklin Mint Inc.	June 13, 2006	Appeal allowed in part
AP-2000-014	Asia Pacific Enterprises Corporation	July 12, 2006	Appeal dismissed
AP-2001-075	MilArm Co. Ltd.	July 12, 2006	Appeal dismissed
AP-2002-003	Bill Rampton	July 12, 2006	Appeal dismissed
AP-2002-014	Robert Koy	July 12, 2006	Appeal dismissed
AP-2002-102	Stanley T. Wong	July 12, 2006	Appeal dismissed
AP-2002-114	MilArm Co. Ltd.	July 12, 2006	Appeal dismissed
AP-2003-009	Jencon Bits of Pieces	July 12, 2006	Appeal dismissed
AP-2003-018	Tom Pak	July 12, 2006	Appeal dismissed
AP-2003-044	Digital Canoe Inc.	July 12, 2006	Appeal dismissed
AP-2003-054	Kenneth Lee	July 12, 2006	Appeal dismissed
AP-2004-047	Digital Canoe Inc.	July 12, 2006	Appeal dismissed
AP-2005-036	Ka Wong	July 18, 2006	Appeal dismissed
AP-2005-015	S.C. Johnson & Son, Limited	July 19, 2006	Appeal dismissed
AP-2005-017	Editions Gallery Ltd.	July 26, 2006	Appeal allowed in part
AP-2004-057	Canadian Tire Corporation Limited	August 2, 2006	Appeal allowed
AP-2005-040	John Draganiuk	September 27, 2006	Appeal dismissed
AP-2005-029	Fritz Marketing Inc.	November 2, 2006	Appeal dismissed
AP-2006-009	Innovak DIY Products Inc.	November 16, 2006	Appeal dismissed
AP-2005-046	Duhamel & Dewar Inc.	February 8, 2007	Appeal dismissed
AP-2005-053	Ferragamo U.S.A. Inc.	March 2, 2007	Appeal allowed
AP-2006-012	Serge Poirier	March 8, 2007	Appeal dismissed
AP-2005-039	Morris National Inc.	March 9, 2007	Appeal dismissed
AP-2006-013	Jonathan and Nicolette Ross	March 13, 2007	Appeal dismissed
AP-2005-028	Renelle Furniture Inc.	March 23, 2007	Appeal dismissed
Excise Tax Act			
AP-2005-001	2544-7343 Québec Inc.	May 10, 2006	Appeal dismissed
AP-2005-002	2758-4747 Québec Inc.	May 10, 2006	Appeal dismissed
AP-2005-003 and AP-2005-004	Les Opérations JTC (Richelieu) Inc.	May 10, 2006	Appeals dismissed
AP-2004-001	Holste Transport Limited	July 14, 2006	Appeal dismissed
AP-2004-019	Diamond Conversions Inc.	September 21, 2006	Appeal dismissed
AP-2005-022 and AP-2005-023	Les Entreprises O. Dubé Enr. and 3669602 Canada Inc.	March 21, 2007	Appeals dismissed

Summary of Selected Decisions

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 having been 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.

AP-2005-003 and AP-2005-004—*Les Opérations JTC (Richelieu) Inc. v. Minister of National Revenue*

These were appeals under section 81.19 of the *Excise Tax Act* from two decisions of the Minister of National Revenue. The issue in these appeals was whether Les Opérations JTC (Richelieu) Inc. was entitled to a refund of excise tax paid on the portion of diesel fuel purchased in Canada and transported outside of Canada in the fuel tank of a vehicle, but consumed in the United States, for the periods from January 1 to December 31, 2001, and from January 1 to December 31, 2002.

Following the decision of the Federal Court of Appeal in *Penner International Inc. v. Canada*, the Government announced in the Federal Budget of February 18, 2003, its intention to amend Part VII of the *Excise Tax Act* to clarify that diesel fuel taken out of the country in the fuel tank of a vehicle does not qualify as an export and that no rebate of tax is payable in respect of that fuel. It also announced that the amendment would apply to rebate applications received after February 17, 2003.

The Tribunal noted that Les Opérations JTC (Richelieu) Inc. admitted having mailed its application to the Minister of National Revenue after February 17, 2003. Accordingly, it found that the refund application was received after February 17, 2003, and that, therefore, Les Opérations JTC (Richelieu) Inc. was ineligible for a refund pursuant to subsection 63(2) of the *Budget Implementation Act*, 2003. Accordingly, the appeals were dismissed.

AP-2003-045—*Norsk Fitness Products Inc. v. President of the Canada Border Services Agency*

This was an appeal under subsection 67 of the *Customs Act* from decisions of the Commissioner of the Canada Customs and Revenue Agency (CCRA) (now the President of the CBSA). The first issue in this appeal was whether the magnetic insoles were properly classified under tariff item No. 6406.99.90 of the schedule to the *Customs Tariff* as other parts of footwear of other materials, as determined by the CCRA, or should have been classified under tariff item No. 8506.19.90 as other permanent magnets, as claimed by Norsk Fitness Products Inc. The second issue was whether the magnetic support articles were properly classified under tariff item No. 6307.90.99 as other made up articles of other textile materials, as determined by the CCRA, or should have been classified under item No. 8505.19.90 as other permanent magnets, as claimed by Norsk Fitness Products Inc.

In the Tribunal's opinion, the magnetic insoles were correctly classified under tariff item No. 6406.99.90. Note I(B) of the *Explanatory Notes to the Harmonized Commodity Description and Coding System* to heading No. 64.06 explains that the heading covers removable insoles of any material other than asbestos. The Tribunal found that the goods were marketed and sold as magnetic *insoles*, and there was no evidence that they were anything but insoles. According to the Tribunal, the fact that they were made of magnetic material was not enough to remove them from the heading, since only if they were made of asbestos would they be classified elsewhere. Therefore, the Tribunal concluded that the magnetic insoles

were classifiable in the above heading under Rule 1 of the *General Rules for the Interpretation of the Harmonized System*.

As for the magnetic support articles, although superficially similar to rehabilitative braces and other orthotic devices used in physiotherapy, the Tribunal found that they were different in several important ways, as they contain magnets, are less elastic and are marketed differently. The Tribunal determined that the magnetic support articles were purchased for the therapeutic effect of the magnets and not as simple wraps, which was evidenced by the significant difference in price between the magnetic support articles and ordinary orthotic supports. The Tribunal found that the magnetic support articles should be classified under tariff item No. 8505.11.00 as permanent magnets of metal. Accordingly, the appeal was allowed in part.

AP-2005-019—*Bauer Nike Hockey Inc. v. President of the Canada Border Services Agency*

This was an appeal under subsection 67(1) of the *Customs Act* from a decision of the President of the Canada Border Services Agency. The issue in this appeal was whether the goalie pads that were imported by Bauer Nike Hockey Inc. (Bauer Nike) were properly classified under tariff item No. 9506.99.50 of the schedule to the *Customs Tariff* as shin-guards or waist, thigh and hip protective equipment, as determined by the Canada Border Services Agency, or should have been classified under tariff item No. 9506.99.90 as other sports equipment or under tariff item No. 9506.99.40 as leg pads for cricket, as claimed by Bauer Nike.

The Tribunal found that, based on their physical characteristics, the goalie pads and shin-guards could not reasonably be seen as interchangeable. It found that the marketing literature submitted by Bauer Nike clearly distinguished between the two items, that the price of the two items differed considerably and that the rules governing hockey treated the items separately. The Tribunal also relied upon the expert testimony of hockey equipment designers and upon the distinct terminology used by the hockey community. The Tribunal found that the goalie pads were covered by tariff item No. 9506.99.90 as the classification description associated with tariff item No. 9506.99.50 was too specific to cover the goalie pads. To fall under that tariff item, the classification description would have had to read “or similar items” or have other such language, but in this case, it was tariff item No. 9506.99.90 that expressly covered “Other” items. Accordingly, the appeal was allowed.

Appeal Cases Before the Federal Court of Appeal or the Federal Court

Appeal No.	Appellant	File No./Status
AP-99-062	Barney Printing Limited	T—1627—01 Appeal discontinued (December 1, 2006)
AP-2000-014	Asia Pacific Enterprises Corporation	A—436—06
AP-2000-034	Scott Paper Limited	A—513—05 Appeal dismissed (November 17, 2006)
AP-2002-007	King West Communications Inc.	T—1335—03
AP-2002-008	The Russo Group Inc.	T—1332—03
AP-2002-034 to AP-2002-037	Pierre Roy et Associés Inc. for Lithochrome (1974) Inc. (in Bankruptcy), Le Groupe Lithochrome Inc. (in Bankruptcy), Filmographie P.F. Inc. (in Bankruptcy) and Opticouleur Inc. (in Bankruptcy)	T—1134—05
AP-2003-010R	Agri-Pack	A—273—06 Appeal dismissed (March 21, 2007)
AP-2004-009	Cherry Stix Ltd.	A—607—05
AP-2004-011	Decolin Inc.	A—608—05 Appeal dismissed (December 21, 2006)
AP-2004-017	3319067 Canada Inc. (Universal Lites)	A—264—06
AP-2004-018	Outils Gladu Ltée	A—594—05
AP-2005-005, AP-2005-010, AP-2005-011 and AP-2005-020	Arctic Cat Sales Inc.	A—166—06
AP-2005-006	Jam Industries Ltd.	A—245—06
AP-2005-017	Editions Gallery Ltd.	A—457—06 Appeal discontinued (November 10, 2006)
AP-2005-027	Les Huiles Thuot et Beauchemin Inc.	T—618—06
AP-2006-009	Innovak DIY Products Inc.	A—31—07
<p>Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not always participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.</p>		

CHAPTER V

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 agreements: Chapter Ten of *NAFTA*, Chapter Five of the *AIT* or the *AGP*. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, and January 1, 1996, respectively.

Any potential suppliers who believe that they may have been unfairly treated during the solicitation or evaluation of bids, or in the awarding of contracts on a designated procurement, may lodge a formal complaint with the Tribunal. A potential supplier with an objection is encouraged to attempt to resolve the issue first with the government institution responsible for the procurement. If this process is not successful or a supplier wishes 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. Complainants may utilize the on-line procurement complaint form that can be found on the Tribunal's Web site.

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 the 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 and a copy of the complaint itself. An official notice of the complaint is also published on MERX and in 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.

After receipt of its copy of the complaint, the government institution responsible for the procurement files a response called the Government Institution Report. The complainant and any intervener are sent a copy of the response and then have the opportunity to submit comments. Any comments made are forwarded to the government institution and other parties to the inquiry.

Copies of any other submissions or reports prepared for the inquiry are also circulated to all parties for their comments. Once this phase of the inquiry is completed, the Tribunal reviews the information collected and decides if a public hearing is necessary or if the case can be decided on the basis of the information on the record.

The Tribunal then determines whether the complaint is valid. If the complaint is found to be valid, the Tribunal may make recommendations to the government institution (such as re-tendering, re-evaluating or providing compensation). 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, by statute, to be implemented to the greatest extent possible.

The Tribunal may also award reasonable costs to the complainant or the responding government institution depending on the nature and circumstances of the case. The Tribunal publishes, on its Web site, a guideline for further streamlining the review process by recommending standard complaint costs to be awarded to either side, depending on the relative complexity of the case.

Procurement Complaints

Summary of Activities

	2005-2006	2006-2007
Number of Complaints		
Carried over from previous fiscal year	8	7
Received in fiscal year	58	53
Remanded	1	1
Total	67	61
Cases Resolved		
Withdrawn or resolved by the parties	4	3
Abandoned while filing	2	-
Subtotal	6	3
Inquiries Not Initiated		
Lack of jurisdiction	3	6
Late or improper filing	14	7
No valid basis/no reasonable indication of a breach/premature	20	14
Subtotal	37	27
Inquiry Results		
Complaints dismissed	3	3
Complaints not valid	4	6
Complaints valid or valid in part	10	12
Remand decisions	-	1
Subtotal	17	22
Outstanding at End of Fiscal Year	7	9

In 2006-2007, PWGSC alone issued approximately 20,900 contracts valued at between \$25,000 and \$300 million, for a total value of \$10.3 billion. The 53 complaints received in the fiscal year pertained to 51 different contracts, representing less than 1 percent of the total number of contracts issued by PWGSC in 2006-2007.

Summary of Selected Determinations

During the fiscal year, the Tribunal issued 19 determinations of its findings and recommendations. In 12 of the 19 determinations, the complaints were determined to be valid or valid in part. Nine cases were in progress at year-end. The table at the end of this chapter summarizes these activities.

Of the cases investigated 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.

PR-2006-003—Alliance agricole internationale

This was a complaint filed by the Alliance agricole internationale, made up of the Centre canadien d'étude et de coopération internationale, the Société de coopération pour le développement international and L'Union des producteurs agricoles—Développement international (collectively the Alliance), concerning a procurement by the Canadian International Development Agency (CIDA) for the provision of services for a project in support of the Support for the Development of Agricultural Productions in Mali project, for which a consortium, formed by the Alliance and Tecsum Inc. (Tecsum), submitted a proposal. The Alliance alleged that, contrary to CIDA's directives and without the knowledge of the other bidders, an internal review and appeal procedure had been initiated during the tendering process, aimed at reversing CIDA's initial decision regarding the ineligibility of the proposal of a consortium formed by SNC-Lavalin Inc., Géomar International inc. and the Fédération des Agriculteurs et Agricultrices Francophones du Nouveau-Brunswick.

The Alliance did not file its complaint on behalf of the consortium and never claimed to have had Tecsum's support. As such, the Tribunal determined that the Alliance was not a prospective bidder according to the definition of "potential supplier" in the *CITT Act*. Therefore, the Tribunal dismissed the complaint because it found that it did not have jurisdiction to proceed with its inquiry (one member dissenting).

The Tribunal awarded costs to CIDA in the amount of \$1,700 for responding to the complaint.

The dissenting member was of the opinion that, nothing in the *CITT Act* requires the participation of all members of the consortium in order for one of its members, in this case the Alliance, to have sufficient interest to file the complaint in question. The concept of "bidder or prospective bidder" inherently includes the concept of sufficient interest that is at the very root of the processes for triggering judicial and quasi-judicial proceedings in Canada. The member agreed with the Alliance, namely, that it was one of the parties that made a bid and, in that sense, it was a "bidder" and, therefore, had the standing of "bidder or prospective bidder" required to file a complaint pursuant to section 30.11 of the *CITT Act*.

Consequently, the dissenting member was of the opinion that the Tribunal had jurisdiction to conduct an inquiry into this complaint.

PR-2006-016—Canyon Contracting

This was a complaint filed by Canyon Contracting (Canyon) that concerned a procurement by the Parks Canada Agency (Parks Canada) for the installation of signs in various locations throughout Riding Mountain National Park. Canyon alleged that Parks Canada improperly made changes to the technical specifications after the contract was awarded.

The Tribunal found that, because the changes that were made to the requirement were substantial and completely contradicted the original specifications, Parks Canada effectively negotiated a sole source contract for a different requirement. Accordingly, the Tribunal found that Parks Canada breached the *AIT*.

The Tribunal recommended that Parks Canada compensate Canyon for its lost opportunity by an amount equal to half of 10 percent of the value of the winning tender or \$6,050. The Tribunal also awarded Canyon costs for preparing and proceeding with the complaint in the amount of \$1,000.

This was a complaint filed by Calian Ltd. (Calian) that concerned the procurement of driver wheeled training services by PWGSC on behalf the Department of National Defence (DND). Calian alleged that Valcom Consulting Group Inc. (Valcom), a competitor of Calian, improperly used serving Canadian Forces (CF) members attached to the unit that developed the Statement of Work (SOW) for the subject solicitation to serve as its recruiters and to screen résumés relating to the subject solicitation. Calian alleged that the CF members actively attempted to convince prospective employees not to work with Calian and that Valcom received information not available to other bidders as a result of this relationship. Calian also alleged that, as a result, there was a clear conflict of interest and a reasonable apprehension of bias in respect of the procurement process.

The Tribunal found that PWGSC and DND, in allowing Valcom to hire and/or obtain the services of the two named serving CF members, employees of DND while Valcom was actively trying to obtain a contract with DND, violated both the spirit and the letter of the applicable trade agreements. However, the Tribunal noted that the two named serving CF members were not involved in the evaluation of the proposals. Consequently, the circumstances surrounding this matter did not give rise to a reasonable apprehension of bias in the sense of having had an influence on the evaluation committee.

The Tribunal decided that a conflict of interest or, at minimum, an appearance of conflict of interest, existed when active CF members entered into a relationship with a potential supplier to DND. Such activities, even though they appeared to be permitted under DND practices, provided an advantage to Valcom over Calian.

Due to the circumstances of this case, the Tribunal decided not to recommend the immediate cancellation of the contract, but instead recommended that the contract not be extended with respect to the option years and, should DND wish to proceed in those years, that it carry out a new procurement process.

Judicial Review of Procurement Decisions

The following table lists the procurement decisions that were appealed to and/or decided by the Federal Court of Appeal during the fiscal year.

File No.	Complainant at the Tribunal	Applicant before the Federal Court of Appeal	File No./Status
PR-2004-050	Med-Emerg International Inc.	Med-Emerg International Inc.	A—330—05 Application dismissed (April 25, 2006) A—365—05 Application dismissed (April 25, 2006)
PR-2004-054R	Envoy Relocation Services	Attorney General of Canada	A—243—06
PR-2004-058 and PR-2004-059	Trust Business Systems	Attorney General of Canada	A—278—05 Application allowed (March 8, 2007)
PR-2005-004	Northern Lights Aerobatic Team, Inc.	Northern Lights Aerobatic Team, Inc.	A—465—05 Application withdrawn (May 29, 2006)
PR-2005-035	Averna Technologies Inc.	Department of Public Works and Government Services	A—481—06 Application withdrawn (January 11, 2007)
PR-2006-003	Canadian International Development Agency	The Alliance agricole internationale, made up of the Centre canadien d'étude et de coopération internationale, the Société de coopération pour le développement international and L'Union des producteurs agricoles— Développement international	A—393—06 Application discontinued (December 20, 2006)
PR-2006-026	Canadian North Inc.	Attorney General of Canada	A—520—06 Motion dismissed (December 4, 2006) Application allowed (March 6, 2007)
		Bradley Air Services Limited (carrying on business under the trade name of First Air)	A—532—06 Application allowed (March 6, 2007) A—110—07
		Canada Post Corporation	A—565—06 Application allowed (March 6, 2007)
		Canadian North Inc.	A—95—07
		Attorney General of Canada	A—106—07
PR-2006-039	Europe Displays, Inc.	Europe Displays, Inc.	A—88—07
PR-2006-045	Les Systèmes Equinox Inc.	Les Systèmes Equinox Inc.	A—128—07

Disposition of Procurement Complaints

File No.	Complainant	Status/Decision
PR-2006-026R	Canadian North Inc.	Remanded to the Tribunal
PR-2004-054R	Envoy Relocation Services	Decision rendered on April 26, 2006 Complaint valid
PR-2005-042	Raymond Arseneault Consultants	Decision rendered on April 18, 2006 Complaint not valid
PR-2005-044	Deloitte & Touche LLP	Decision rendered on May 11, 2006 Complaint valid
PR-2005-050	The Impact Group	Decision rendered on June 14, 2006 Complaint valid in part
PR-2005-054	Entreprise aérogologique Rafale O Nord	Decision rendered on May 23, 2006 Complaint valid
PR-2005-056	P & L Communications Inc.	Decision rendered on June 6, 2006 Complaint valid
PR-2005-058	Excel HR (operating as excel ITR)	Decision rendered on August 25, 2006 Complaint not valid
PR-2006-001	Trust Business System	Complaint withdrawn
PR-2006-002	CNW Group Ltd.	Not accepted for inquiry, no jurisdiction
PR-2006-003	Alliance agricole internationale, made up of the Centre canadien d'étude et de coopération internationale, the Société de coopération pour le développement international and L'Union des producteurs agricoles—Développement international	Complaint dismissed
PR-2006-004	Mircom Technologies Ltd.	Decision rendered on July 11, 2006 Complaint not valid
PR-2006-005	Basil Corporate Solutions Inc.	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-006	EF Johnson	Not accepted for inquiry, no jurisdiction
PR-2006-007	International Safety Research Inc.	Complaint dismissed
PR-2006-008	Calian Ltd.	Decision rendered on July 21, 2006 Complaint valid
PR-2006-009	Vantage Point International Inc.	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-010	CGI Information Systems and Management Consultants Inc.	Decision rendered on August 14, 2006 Complaint not valid
PR-2006-011	Flag Connection Inc.	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-012	Info-Electronics H P Systems Inc.	Decision rendered on August 2, 2006 Complaint not valid
PR-2006-013	HITT Holland Institute of Traffic Technology B.V.	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-014	Chessen Group Inc.	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-015	Partnering & Procurement Inc.	Decision rendered on August 22, 2006 Complaint valid
PR-2006-016	Canyon Contracting	Decision rendered on September 19, 2006 Complaint valid
PR-2006-017	CPI Canada Inc.	Not accepted for inquiry, no jurisdiction
PR-2006-018	Marathon Management Company	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-019	Pelican Products, Inc. (Canada)	Decision rendered on October 17, 2006 Complaint not valid
PR-2006-020	Canadian Beaver Information Technology Inc.	Decision rendered on November 28, 2006 Complaint valid
PR-2006-021	Digidyne Inc.	Not accepted for inquiry, late filing
PR-2006-022	Lengkeek Vessel Engineering Incorporated	Decision rendered on November 2, 2006 Complaint valid in part
PR-2006-023	Computer Label Worldwide Co. Ltd.	Not accepted for inquiry, not a potential supplier

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2006-024	Antian Professional Services Inc.	Decision rendered on December 20, 2006 Complaint valid in part
PR-2006-025	Nedco, a division of Rexel Canada Electrical Inc.	Not accepted for inquiry, late filing
PR-2006-026	Canadian North Inc.	Decision rendered on February 5, 2007 Complaint valid
PR-2006-027	The Access Information Agency Inc.	Not accepted for inquiry, late filing
PR-2006-028	The Language Studio Inc.	Not accepted for inquiry, late filing
PR-2006-029	Kerr Norton (1021076 Ontario Inc.)	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-030	Ready John Inc.	Not accepted for inquiry, late filing
PR-2006-031	The Access Information Agency Inc.	Accepted for inquiry, case in progress
PR-2006-032	Columbia Avionics, Inc.	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-033	Irving Shipbuilding Inc.	Complaint withdrawn
PR-2006-034	Paradise Company	Decision rendered on March 6, 2007 Complaint valid
PR-2006-035	Zenix Engineering Ltd.	Accepted for inquiry, case in progress
PR-2006-036	West Atlantic Systems	Not accepted for inquiry, late filing
PR-2006-037	Comtrex Communications Inc.	Complaint dismissed
PR-2006-038	Tankatek	Not accepted for inquiry, no jurisdiction
PR-2006-039	Europe Displays Inc.	Not accepted for inquiry, no jurisdiction
PR-2006-040	Marathon Management Company	Complaint withdrawn
PR-2006-041	Marathon Management Company	Accepted for inquiry, case in progress
PR-2006-042	EDS Canada Inc.	Accepted for inquiry, case in progress
PR-2006-043	Secor Consulting Inc.	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-044	Chaussures Régence	Accepted for inquiry, case in progress
PR-2006-045	Les Systèmes Equinox Inc.	Accepted for inquiry, case in progress
PR-2006-046	Acron Capability Engineering Inc.	Accepted for inquiry, case in progress
PR-2006-047	Qualicum Corporation	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-048	Ecosfera Inc.	Not accepted for inquiry, premature
PR-2006-049	BDMK Consultants Inc.	Accepted for inquiry, case in progress
PR-2006-050	TPG Technology Consulting Ltd.	Not accepted for inquiry, late filing
PR-2006-051	Evripos Jamitorial Services Limited	Not accepted for inquiry, no reasonable indication of a breach
PR-2006-052	Human Resource Systems Group Ltd.	Not accepted for inquiry, no jurisdiction
PR-2006-053	PowerWright Atlantic	Not accepted for inquiry, no reasonable indication of a breach

CHAPTER VI

SAFEGUARDS

Global Safeguard Inquiries

The Tribunal conducts inquiries to determine whether increased imports of certain goods into Canada are causing or threatening to cause injury to Canadian producers of like goods. The Tribunal may initiate import safeguard inquiries at the direction of the Government or following a complaint by domestic producers. Pursuant to an inquiry where the Tribunal determines that increased imports of the goods have caused, or are threatening to cause, serious injury to Canadian producers of like or directly competitive goods, the Government may ask the Tribunal to propose measures to remedy the injury.

The Government may also direct the Tribunal to conduct inquiries to determine whether the provision, by persons normally resident outside Canada, of services in Canada is causing or threatens to cause injury to, or retards, the provision of any services in Canada by persons normally resident in Canada.

Inquiry Completed in the Fiscal Year

No global safeguard inquiry was completed in the fiscal year.

Inquiry Terminated in the Fiscal Year

No global safeguard inquiry was terminated in the fiscal year.

Safeguard Inquiries—Imports from China

The Tribunal may conduct inquiries to determine whether increased imports of certain goods from China are causing or threatening to cause market disruption to domestic producers of like goods. It may also conduct inquiries to determine if any action affecting imports of goods from China into the market of another WTO country causes, or threatens to cause, a significant diversion of trade into Canada. It may initiate market disruption or trade diversion inquiries following a complaint by domestic producers. The Government may also direct the Tribunal to conduct market disruption or trade diversion inquiries. Pursuant to an inquiry where the Tribunal makes determinations of market disruption or trade diversion, the Government may apply import safeguard measures to assist domestic producers.

Inquiry Completed in the Fiscal Year

No safeguard inquiry with respect to China was completed in the fiscal year.

Inquiry Terminated in the Fiscal Year

On July 7, 2005, UNITE HERE Canada, on its own behalf, on behalf of its members and on behalf of Ms. Radika Quansoon, Mr. Carlos Costa and Ms. Christina Ling (collectively the complainants) submitted two complaints to the Tribunal requesting that it initiate a safeguard inquiry into market disruption and trade diversion caused by the importation of textile and apparel goods from China. According to the complainants, the Canadian producers of the textile and apparel goods from China included the complainants and the firms engaged in the production of like or directly competitive goods.

On October 6, 2006, the Tribunal found that the complainants did not have the required standing to file a complaint pursuant to subsections 30.22(1) and 30.23(1) of the *CITT Act* and that, therefore, the Tribunal was without jurisdiction to entertain or further assess the complaints.

Inquiry in Progress at Year-end

There was no inquiry in progress at year-end.

Safeguard Cases Before the Federal Court of Appeal

The following table lists the Tribunal's safeguard cases that were before the Federal Court of Appeal in the fiscal year.

Case No.	Product	Country of Origin	File No./Status
GS-2004-001 and GS-2004-002	Bicycles and frames	All countries	A—439—05 Application discontinued (December 7, 2006) A—448—05 Application discontinued (September 28, 2006)
CS-2005-001	Barbeques	China	A—532—05 Application discontinued (September 13, 2006) A—534—05 Application discontinued (June 12, 2006) A—537—05 Application discontinued (June 12, 2006) A—539—05 Application discontinued (April 11, 2006)

CHAPTER VII

ECONOMIC, TRADE AND TARIFF REFERENCES

Economic, Trade and Tariff References

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 or tariff matter. In an inquiry, the Tribunal acts in an advisory capacity, with powers to conduct research, receive submissions and representations, find facts, hold public hearings and report, with recommendations as required, to the Government or the Minister of Finance.

Tariff References Completed in the Fiscal Year or in Progress at Year-end

The Tribunal completed one tariff reference during the fiscal year. There were no references in progress at year-end.

MN-2005-001—Availability of Fabrics Produced in Canada

On October 27, 2005, the Tribunal was directed by the Minister of Finance to inquire into and report on the availability from Canadian production of apparel fabrics classified under certain tariff items in the *Customs Tariff*. In his letter, the Minister of Finance noted that, on June 30, 2005, the Tribunal released its *Report on the Production in Canada of Certain Fibres, Yarns and Apparel Fabrics* and that the Tribunal did not receive sufficiently detailed production information during the course of that inquiry to enable it to make tariff relief recommendations on a number of tariff items that contain a wide variety of products. For 12 of these tariff items, the Minister of Finance asked the Tribunal to carry out additional inquiry.

On November 23, 2005, the Minister of Finance further directed the Tribunal, where appropriate, in identifying new eight-digit tariff items, to ensure that the scope of the product descriptions reflected market realities by considering the nature of the competition between products in the marketplace and the imminent production of any fabric.

During the inquiry, the Tribunal sent questionnaires to 31 potential domestic textile manufacturers. In total, 21 firms reported domestic sales and/or imminent production of the apparel fabrics under consideration. The Tribunal completed the preliminary information-gathering phase of the inquiry on February 2, 2006 with the issuance of a staff report.

After carefully considering the evidence, the Tribunal came to the conclusion that it could not recommend new eight-digit dutiable tariff items for apparel fabrics without adversely affecting textile manufacturers by undermining existing duty protection on domestically produced apparel fabrics. Accordingly, the Tribunal decided to proceed with recommendations either to eliminate or to retain duties on each of the 12 tariff items covered by the inquiry.

The Tribunal recommended that duties be eliminated on 4 of the 12 tariff items. Duties paid by apparel producers on imports of fabrics under the four tariff items amounted to approximately \$5 million between January 1, 2003, and September 30, 2005. Domestic sales of fabrics reported by textile manufacturers for these four tariff items were less than \$1 million over the same period.

Under the eight tariff items where the Tribunal recommended retention of duties, domestic sales of fabrics amounted to more than \$134 million between January 1, 2003, and September 30, 2005. Over the same period, duties paid by apparel producers on imports of these fabrics were \$19 million.

CHAPTER VIII

STANDING TEXTILE REFERENCE

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as last amended on October 27, 2005, the Tribunal is 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, that would maximize net economic gains to Canada.

The terms of reference call for the Tribunal to report annually to the Minister of Finance on the investigation process. This chapter reports on the Tribunal's activities under the textile reference.

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*. 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. Except in exceptional circumstances, recommendations are not to include a gender-specific "end use". The recommendation could be for tariff relief for either a specific or an indeterminate period of time.

Process

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

Filing and Notification of a Request

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

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

Investigations

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

Interested parties include all persons whose 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.

To prepare a staff investigation report, the Tribunal's staff gathers information through such means as questionnaires and plant visits. Information is obtained from the requester and interested parties to determine whether the tariff relief sought will maximize net economic gains for Canada.

In most cases, 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. In cases where the written record is not sufficient to dispose of the matter, a public hearing is held.

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, agency or other party.

Recommendations to the Minister of Finance

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, it will issue its recommendations within an earlier specified time frame.

Request for Review

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may ask 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 the request.

Review on Expiry

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

Summary of Activities

New Requests

	2005-2006	2006-2007
Requests		
Received	0	2
Withdrawn	0	0
Awaiting initiation of investigation	0	0
Investigations completed during the year	1	1
Investigations in progress at year-end	0	1
Recommendations to Minister of Finance		
Tariff relief	1	1
No tariff relief	0	0
Reports to Minister of Finance	1	1
Cumulative Totals (since 1994)		
Requests received	175	177
Recommendations to Minister of Finance		
Tariff relief	105	106
No tariff relief	49	49

During the fiscal year, the Tribunal issued one report to the Minister of Finance that related to one request for tariff relief and initiated one request. The following table summarizes this activity.

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-2006-001	Peerless Clothing Inc.	Fabric	October 17, 2006	Indeterminate tariff relief
TR-2006-002	Tricots Liesse (1983) Inc.	Yarn		In progress

Effects

The implementation of Tribunal recommendations is made by adding new tariff items to the *Customs Tariff* or, occasionally, by issuing specific customs duty remission orders. The table at the end of this chapter provides a list of the recommendations implemented by the Government as of December 31, 2006.

It should be noted that some of the tariff items in the list differ from the tariff items as they were originally enacted to give effect to the Tribunal's recommendations under the standing textile reference. First, on November 21, 2005, as part of its implementation of the recommendations made by the Tribunal in Reference No. MN-2004-002, the Government put in place a new tariff structure that created a number of

duty-free tariff items. In instances where these broader duty-free tariff items covered products that were already provided duty-free treatment by individual tariff items implemented under the standing textile reference, the latter individual tariff items were deleted from the *Customs Tariff*. Second, on December 13, 2006, at the same time as it implemented the Tribunal's recommendations in Reference No. MN-2005-001, the Government further modified the tariff structure to eliminate additional tariff items and to amend the existing wording to remove additional gender-specific or product-specific end use requirements.

During the period from January 1 to December 31, 2006, the Tribunal estimates that the tariff items as listed in the table at the end of this chapter covered imports worth about \$283 million and provided tariff relief worth about \$28.5 million; for the comparable period in 2005, these amounts were about \$184 million and about \$24 million respectively. The increase in the value of tariff relief in 2006 is reflective of the changes in the tariff structure described above.

As stated earlier, textile inputs on which tariff relief may be requested are limited to 12 chapters of the *Customs Tariff*. From January 1 to December 31, 2006, tariff relief principally affected textile inputs falling in three chapters: Chapter 51 ("Wool, fine or coarse animal hair; horsehair yarn and woven fabric"); Chapter 52 ("Cotton") and Chapter 54 ("Man-made filaments"). The percentage of total imports accounted for by the imports benefiting from tariff relief, falling in these 12 chapters, ranged from 0 to 52.3 percent. Overall, slightly more than 1 percent of total imports falling in the 12 chapters benefit from tariff relief. The following table provides, for calendar year 2006, a distribution of the imports benefiting from tariff relief, by *Customs Tariff* chapter.

Distribution of Imports by Customs Tariff Chapter

Chapter	Percentage
39	0.0
40	0.0
51	52.3
52	12.9
53	6.1
54	12.8
55	6.2
56	0.3
58	1.7
59	5.0
60	1.1
70	<u>0.2</u>
Weighted Average	<u>1.14</u>

Source: Statistics Canada.

Summary of Recommendation

A summary of the Tribunal recommendation issued during the fiscal year follows.

TR-2006-001—Peerless Clothing Inc.

The Tribunal recommended to the Minister of Finance that tariff relief be granted, for an indeterminate period of time, on importations from all countries of woven fabrics, plain weave, consisting solely of non-textured polyester filaments mixed with elastomeric filaments, having the elastomeric yarn only in the weft, of a weight of less than 90 g/m², of tariff item No. 5407.61.99, for use as lining in the manufacture of suits, vests (waistcoats), jackets (sportcoats and blazers) and trousers.

Peerless Clothing Inc. requested the tariff relief. The Tribunal noted that no textile producer opposed the request other than Consoltex, which expressed concerns regarding the broad generic end-use provision “for use as lining in the manufacture of apparel” contained in the notice of commencement of investigation. Consoltex stated that it produces identical or substitutable fabrics for outerwear apparel (e.g. ski wear and active wear), as well as for uniforms and workwear apparel. The Tribunal was of the view that Consoltex could suffer as a result of tariff relief on the basis of a generic end-use provision and, therefore, recommended that tariff relief be limited to a more restricted end use, i.e. “for use as lining in the manufacture of suits, vests (waistcoats), jackets (sportcoats and blazers) and trousers”.

The Tribunal concluded that tariff relief would result in yearly benefits to users of these fabrics in excess of \$350,000.

Tariff Relief Recommendations in Place

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2006
TR-94-001		Canatex Industries (Division of Richelieu Knitting Inc.)	5402.41.00*
TR-94-004		Woods Canada Limited	5208.52.10
TR-94-010		Palliser Furniture Ltd.	5806.20.10
TR-94-012		Peerless Clothing Inc.	5309.29.30*
TR-94-013 and TR-94-016		MWG Apparel Corp.	5208.42.91* 5208.43.70* 5208.49.91* 5513.31.20* 5513.32.20* 5513.33.20*
TR-94-017 and TR-94-018		Elite Counter & Supplies	9943.00.00
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
TR-95-004		Lingerie Bright Sleepwear (1991) Inc.	5208.12.20** 5208.52.20**
TR-95-005		Lingerie Bright Sleepwear (1991) Inc.	5513.11.91* 5513.41.10**

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2006
TR-95-009		Peerless Clothing Inc.	5408.21.40* 5408.21.40* 5408.22.23* 5408.22.91*
TR-95-010 and TR-95-034		Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20
TR-95-011		Louben Sportswear Inc.	5408.31.40* 5408.32.60*
TR-95-012		Perfect Dyeing Canada Inc.	5509.32.10
TR-95-013A		Doubletex	5208.11.00* 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
TR-95-036		Canadian Mill Supply Co. Ltd.	5208.21.20
TR-95-037		Paris Star Knitting Mills Inc.	5408.24.12* 5408.24.92* 5408.34.30* 5516.14.20* 5516.24.10**
TR-95-051		Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22
TR-95-053 and TR-95-059		Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.20* 5802.19.40* 5802.19.40*
TR-95-056		Sealy Canada Ltd.	3921.19.20 5407.69.30 5407.73.10 5407.94.10 5516.23.10 5903.90.21 6005.34.20
TR-95-057 and TR-95-058		Doubletex	5407.51.10 5407.61.96 5407.69.10 5515.11.10 5516.21.10 5516.91.10
TR-95-060		Triple M Fiberglass Mfg. Ltd.	7019.59.10
TR-95-061		Camp Mate Limited	6005.31.20 6005.32.20 6005.33.20 6005.34.30
TR-95-064 and TR-95-065		Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6005.34.60 6005.44.20
TR-96-003		Venture III Industries Inc.	5407.61.95**
TR-96-004		Acton International Inc.	5906.99.21

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2006
TR-97-001		Jones Apparel Group Canada Inc.	5407.91.10** 5407.92.20** 5407.93.10** 5408.21.40* 5408.22.91* 5408.23.91* 5408.31.40* 5408.32.60* 5408.33.30*
TR-97-002 and TR-97-003		Universal Manufacturing Inc.	5208.43.70* 5513.41.20**
TR-97-006		Peerless Clothing Inc.	5407.51.30** 5903.90.22** 5903.90.23** 5903.90.24** 6005.31.30** 6005.31.40** 6005.32.30** 6005.32.40** 6005.33.91* 6005.33.91* 6005.34.40** 6005.34.50**
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
TR-97-011		Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16
TR-97-012		Ballin Inc.	5407.93.30 5516.23.91**
TR-97-014		Lenrod Industries Ltd.	5603.93.40
TR-97-015, TR-97-016 and TR-97-020		Helly Hansen Canada Ltd.	5903.20.24
TR-98-001		Cambridge Industries	5608.19.20
TR-98-002		Distex Inc.	6006.23.10
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
TR-98-007		Caulfeild Apparel Group Ltd.	5208.43.70*
TR-98-016		Peerless Clothing Inc.	5407.93.20**
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.60* 5408.33.30* 5408.34.30*
TR-98-019		Tribal Sportswear Inc.	5209.12.10* 5209.22.40* 5209.32.10**
TR-99-002		Albany International Canada Inc.	5404.10.00*
TR-99-003/003A		Western Glove Works Ltd.	5209.31.30 5209.32.30
TR-99-004		Peerless Clothing Inc.	5112.11.50* 5112.11.50* 5112.19.20** 5112.19.30**
TR-99-005		Distex Inc.	6006.22.20
TR-99-006		Coloridé Inc.	5402.41.00*

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2006
TR-99-008		JMJ Fashions Inc.	5407.61.20**
TR-2000-001		Peerless Clothing Inc.	5408.22.23*
TR-2000-002		Majestic Industries (Canada) Ltd.	5802.19.40*
TR-2000-003		Tantalum Mining Corporation of Canada Limited	5911.40.10
TR-2000-004		Ballin Inc.	5516.23.91** 5516.93.00**
TR-2000-005		Peerless Clothing Inc.	5112.11.50* 5112.19.40**
TR-2000-006		Doubletex	5512.11.30 P.C. 2002-1266 5513.11.20 5513.12.10 5513.13.10 P.C. 2002-1266 5514.11.10 5514.12.10 5514.13.10 P.C. 2002-1266 9997.00.00
TR-2000-007 and TR-2000-008		Scapa Tapes North America Ltd.	5208.21.50 5208.31.20
TR-2001-001		Gibson Textile Dyers	5512.29.10
TR-2001-002		Beco Industries Ltd.	5513.41.30
TR-2002-001		Richlu Manufacturing Ltd.	5209.39.10**
TR-2002-002		Peerless Clothing Inc.	5602.10.20**
TR-2002-006		C.S. Brooks Inc.	5407.91.20 5513.11.30
TR-2002-007		Peerless Clothing Inc.	5408.22.91* 5408.23.91*
TR-2002-008		Tribal Sportswear Inc.	5515.11.20**
TR-2002-010/010A		Ballin Inc.	5516.22.10 5516.23.91**
TR-2003-001		Tribal Sportswear Inc.	5208.39.30* 5209.32.40** 5209.39.20** 5209.52.10** 5209.59.10**
TR-2003-002		Sunshine Mills Inc.	5205.24.30 5205.26.00* 5205.27.00*
TR-2003-003		Peerless Clothing Inc.	5603.92.91**
TR-2003-004		Peerless Clothing Inc.	5903.90.23**
TR-2004-001		Tricots Liesse (1983) Inc	5402.31.10
TR-2006-001		Peerless Clothing Inc.	5407.61.97
TA-98-001	TE-97-004 (TR-95-009)	Dyed woven fabrics of rayon and polyester	5408.31.40* 5408.32.60*
TA-98-002	TE-97-003 (TR-94-009)	Vinex FR-9B fabric	5512.99.10
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	5801.35.10

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2006
TA-2003-001	TE-2003-001	Ring-spun yarns	5205.14.20
	TE-2001-001		5205.15.00*
	TE-98-002		5205.24.20
	(TR-94-002 and		5205.26.00*
	TR-94-002A)		5205.27.00*
			5205.28.00*
			5205.35.00*
			5205.46.00*
			5205.47.00*
			5205.48.00*
			5206.14.00*
			5206.15.00*
			5206.24.00**
			5206.25.00*
			5509.53.10
			5509.53.20**
			5509.53.30**
	5509.53.40**		

*Tariff item encompasses goods not covered in the original request as a result of the November 21, 2005, Order in Council.
 ** Tariff item encompasses goods not covered in the original request as a result of the December 13, 2006, Order in Council.