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# **ANNUAL REPORT**

**FOR THE FISCAL YEAR ENDING  
MARCH 31, 1997**

**Canadian  
International  
Trade Tribunal**

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June 30, 1997

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

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Annual Report of the Canadian International Trade Tribunal for the fiscal year ending March 31, 1997.

Yours sincerely,

Patricia M. Close  
Acting Chairman



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**FIGURE**

Number of Measures in Force by  
WTO Members, 1990-95



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# CHAPTER I

## TRIBUNAL HIGHLIGHTS 1996-97

### Appointment of Members

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

Mr. Robert C. Coates, Q.C., was re-appointed to the position of Member of the Tribunal, and Messrs. Arthur B. Trudeau and Charles A. Gracey were appointed as temporary members.

### Dumping and Subsidizing Injury Inquiries and Reviews

The Tribunal initiated four injury inquiries. As of the end of the fiscal year, findings had been issued in two inquiries. The Tribunal also initiated five reviews of earlier injury findings. It issued three decisions, and two reviews were still in progress at the end of fiscal year 1996-97.

### Appeals of Decisions of the Department of National Revenue

The Tribunal issued decisions on 158 appeals from decisions of the Department of National Revenue (Revenue Canada) made under the *Customs Act*, the *Excise Tax Act* and the *Special Import Measures Act* (SIMA).

The Tribunal implemented a number of measures to improve the case management of appeals. The use of teleconferences to deal with preliminary matters and the more systematic review of requests for postponement have helped the Tribunal to deal with files and bring appeals to the hearing stage more expeditiously.

The appointment of one member, at times, to hear appeals of Revenue Canada decisions under the *Customs Act* and some provisions of the *Excise Tax Act* and hearings by way of videoconferencing have allowed the Tribunal to deal more promptly with appeals.

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**Trade and Tariff  
References**

Pursuant to a reference from the Minister of Finance dated July 6, 1994, the Tribunal investigates requests from domestic producers for tariff relief on imported textile inputs and makes recommendations in respect of those requests to the Minister of Finance. During fiscal year 1996-97, the Tribunal issued 23 reports to the Minister of Finance, covering 56 requests for tariff relief.

Revised terms of reference were issued to the Tribunal by the Minister of Finance on July 24, 1996, and a revised *Textile Reference Guide* was issued in October 1996.

In addition, the Tribunal's second annual status report on the investigation process was submitted to the Minister of Finance on November 29, 1996.

**Procurement  
Review**

The Tribunal provides an opportunity for redress for potential suppliers concerned about the propriety of the procurement process relative to contracts covered by the *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (the AIT) and the World Trade Organization (WTO) *Agreement on Government Procurement*.

The Tribunal issued 12 written determinations of its findings and recommendations. In 5 of the 12 written decisions, the complaints were determined to be valid or valid in part. In one case, File No. PR-95-023 (Array Systems Computing Inc.), the Department of Public Works and Government Services decided not to implement the Tribunal's recommendations.

**Review of SIMA**

The Chairman of the Tribunal appeared before the Sub-Committee on the Review of SIMA of the Standing Committee on Finance and the Sub-Committee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade.

On December 11, 1996, the Sub-Committees tabled their joint report on SIMA. The report includes a number of recommendations that would directly affect the operations of the Tribunal.

**Free Trade  
Agreements with  
Israel and Chile**

In 1996, Canada entered into free trade agreements with Israel and Chile. As a result of the *Canada-Israel Free Trade Agreement Implementation Act*, the *Canadian International Trade Tribunal Act* (the CITT Act) was amended in the area of safeguards. When the *Canada-Chile Free Trade Agreement Implementation Act* comes into force, the CITT Act will be further amended to reflect similar changes.

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**Inquiry Process  
Under SIMA**

The Tribunal completed its review of the inquiry process under SIMA. The Tribunal decided to proceed with a number of changes to existing procedures and applied them for the first time in the polyiso insulation board case (Inquiry No. NQ-96-003). The changes were summarized in a discussion paper issued in November 1996.

***Canadian  
International  
Trade Tribunal  
Rules***

The Tribunal is pursuing its review of the *Canadian International Trade Tribunal Rules* (Tribunal's Rules of Procedure) with a view toward amending and augmenting its rules, where necessary, to make them more efficient and to reflect technological innovations that may have an impact on the Tribunal's procedures.

**New Brochure  
and Information  
Documents**

The Tribunal published a brochure entitled "Introductory Guide on the Canadian International Trade Tribunal." This brochure is part of a series of documents that provide more detailed information on dumping and subsidizing inquiries and reviews, appeals from customs, excise and SIMA decisions, textile tariff investigations and procurement review.

**Tribunal's Web  
Site**

In September 1996, the Tribunal launched its Web site ([www.citt.gc.ca](http://www.citt.gc.ca)). This service complements the Tribunal's electronic bulletin board service and Factsline system and is aimed at allowing users a more timely and convenient access to Tribunal publications, decisions, documents, etc.

## Tribunal's Caseload in Fiscal Year 1996-97

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Cases Withdrawn/ Not Initiated	Cases Outstanding (March 31, 1997)
<b>SIMA ACTIVITIES</b>						
Injury Inquiries	3	4	7	5	-	2
Injury Reviews	3	5	8	6	-	2
Expiries <sup>1</sup>	1	8	9	5	1	3
References (Advice)	-	2	2	1	-	1
<b>APPEALS</b>						
<i>Customs Act</i>	378	205	583	114 <sup>2</sup>	138	331
<i>Excise Tax Act</i>	417	25	442	38	150	254
SIMA	<u>109</u>	<u>12</u>	<u>121</u>	<u>6</u>	<u>63</u>	<u>52</u>
<b>Total</b>	<b>904<sup>3</sup></b>	<b>242</b>	<b>1146</b>	<b>158</b>	<b>351</b>	<b>637</b>
<b>TEXTILE REFERENCE</b>						
Requests for Tariff Relief	58	16 <sup>4</sup>	74	57 <sup>5</sup>	7	10
<b>PROCUREMENT REVIEW ACTIVITIES</b>						
Complaints	8	41	49	12	28	9

1. As a result of a different method of reporting expiries, the first column refers to expiries for which decisions on whether or not to review had not been made prior to the end of the previous fiscal year. The fourth column refers to decisions to review.

2. This figure includes 60 eyewear appeals for which decisions on jurisdiction were issued.

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

4. Includes the reference from the Minister of Finance (TR-95-056A).

5. The Tribunal actually issued 23 reports to the Minister of Finance which related to 56 requests for tariff relief, plus the reference from the Minister of Finance.

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# CHAPTER II

## MANDATE, ORGANIZATION AND ACTIVITIES OF THE TRIBUNAL

### Introduction

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

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

### Mandate

The Tribunal's mandate is to:

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

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**Method of Operations**

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

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

**Membership**

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

**Organization**

Members of the Tribunal, currently 8 in number, are supported by a permanent staff of 87 people. Its principal officers are the Executive Director, Research, responsible for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries; the Secretary, responsible for administration, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; the General Counsel, responsible for the provision of legal services to the Tribunal; and the Director of the Procurement Review Division, responsible for the investigation of complaints by potential suppliers concerning any aspect of the procurement process.



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**Organization**

**CHAIRMAN**

Anthony T. Eyton

**VICE-CHAIRS**

Raynald Guay  
Patricia M. Close

**MEMBERS**

Arthur B. Trudeau\*  
Robert C. Coates, Q.C.  
Lyle M. Russell  
Anita Szlajak  
Charles A. Gracey\*

**SECRETARIAT**

**Secretary**  
Michel P. Granger

**RESEARCH BRANCH**

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

**PROCUREMENT REVIEW DIVISION**

**Director**  
Jean Archambault

**LEGAL SERVICES BRANCH**

**General Counsel**  
Gerry Stobo

\* Temporary Member

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## Parliamentary Report on SIMA

On December 11, 1996, the Sub-Committee on the Review of SIMA of the Standing Committee on Finance and the Sub-Committee on Trade Disputes of the Standing Committee on Foreign Affairs and International Trade tabled their joint report on SIMA. The Sub-Committees were asked by the Minister of Finance, on May 17, 1996, to review SIMA and to advise the Government if any changes should be made to the legislation. In their final report, the Sub-Committees recommended the following changes (among others) that would directly affect the operations of the Tribunal.

- The Tribunal should be given the responsibility for making the preliminary determination of injury.
- (Independent) experts should be permitted access to confidential information in SIMA proceedings before the Tribunal.
- Dumping in third country markets should be included in the *Special Import Measures Regulations* as a factor in assessing the evidence of threat of injury.
- Cumulation should be made mandatory in the Tribunal's procedures for determining injury.
- The difference between interim and expiry reviews should be clarified.
- The administrative responsibilities for conducting reviews should be bifurcated (between Revenue Canada and the Tribunal).
- The Tribunal should be required to assess the cumulative injurious effects of dumping/subsidizing in conducting interim and expiry reviews.
- A non-exclusive list of factors should be added to section 45 to guide the Tribunal respecting whether and how to conduct a public interest inquiry.
- The Tribunal's decision that an anti-dumping or countervailing duty might not be in the public interest should be a formal decision reviewable by the Federal Court of Canada.
- The WTO "lesser duty" concept should be incorporated into the public interest provisions of SIMA.

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**Impact of the  
Canada-Israel  
Free Trade  
Agreement and  
the Canada-Chile  
Free Trade  
Agreement on  
Tribunal Activities**

All of these recommendations, except for the Sub-Committees' recommendation that the Tribunal's public interest decisions should be reviewable by the Federal Court of Canada, were supported by the Government.

In 1996, Canada entered into free trade agreements with Israel and Chile. On January 1, 1997, the *Canada-Israel Free Trade Agreement Implementation Act* came into force. As a result, the CITT Act was amended in the area of safeguards. Global safeguard inquiries in respect of goods imported from Israel can now be conducted by the Tribunal. Furthermore, the Tribunal must exclude these goods from any global safeguard action unless they account for a substantial share of imports and contribute importantly to the serious injury. When the *Canada-Chile Free Trade Agreement Implementation Act* comes into force, the CITT Act will be further amended in the area of safeguards to reflect similar changes. In addition, SIMA will be amended to reflect the agreement between Chile and Canada not to apply domestic anti-dumping laws to goods of the other party.

**Inquiry Process  
under SIMA**

In the fall of 1994, the Chairman of the Tribunal set up a staff committee to conduct a fundamental review of Tribunal procedures in injury inquiries under section 42 of SIMA. The committee was mandated to examine ways and means of making the injury inquiry process less costly and less cumbersome, while still preserving fairness. In carrying out its mandate, the committee engaged in wide-ranging consultations both inside and outside the Tribunal.

In the spring of 1996, the committee prepared a discussion paper which identified key issues and questions which needed to be addressed. The paper was distributed for comments to The Canadian Bar Association, members of the trade bar, trade and industry associations, Revenue Canada, the Department of Finance, the Bureau of Competition Policy and other Tribunal stakeholders. The responses received indicated that, on many key issues, there was no clear consensus. However, the responses, as a whole, provided valuable input to the committee's deliberations.

Following these consultations, in the fall of 1996, the committee prepared a series of recommendations for consideration by the Tribunal. Based on these recommendations, the Tribunal decided, in November 1996, to proceed with a number of changes to existing procedures. The thrust of these changes is to:

- ensure that staff research is as focused and relevant as possible by seeking input from parties and their counsel on the design of the Tribunal's survey questionnaires in advance of their distribution;

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- advance the inquiry schedule so that, generally, information is received and distributed earlier, so that issues arising therefrom may be identified and dealt with, to the extent possible, prior to the hearing;
  - provide for key evidence, such as that for specific injury allegations, to be submitted at a time and in a form and manner which allow parties subject to the allegations to have a fair and full opportunity to respond prior to the hearing; and
  - reduce the incidence of excessively long hearings.

The procedural changes were made initially for inquiries under section 42 of SIMA. A number of changes were applied for the first time in the polyiso insulation board case. The Tribunal is implementing similar procedural and scheduling changes, with appropriate modifications, for reviews under section 76 of SIMA.

These changes, as a whole, are intended to foster a process whereby parties' positions are more fully documented prior to the hearing and parties are more fully informed of each other's position. To the extent that this can be achieved, scarce and costly hearing time can be used to focus on the key issues in dispute in an efficient and effective manner.

Guidelines and practice notices providing specific details on the proposed changes will be issued, as required. Some of the changes may eventually be incorporated into the Tribunal's Rules of Procedure.

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## Legislative Mandate of the Tribunal

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

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

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

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# CHAPTER III

## DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

### Inquiries

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

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

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

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

In conducting its inquiries, the Tribunal tries to ensure that all interested parties are made aware of the inquiry. It issues a notice of commencement of inquiry that is published in the *Canada Gazette* and forwarded to all known interested parties. It also requests information from interested parties, receives representations and holds public hearings. Parties participating in these proceedings may conduct their own cases or be represented by counsel.

The Tribunal staff carries out extensive research for each inquiry to serve the Tribunal’s need for relevant information. The Tribunal staff sends questionnaires to manufacturers, importers and purchasers. The data that emerge from the questionnaire responses form the basis of staff reports that focus on the factors to be examined by the Tribunal in arriving at decisions regarding material injury or retardation or threat of material injury to a domestic industry. These reports become part of the case record and are made available to counsel and participants

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**Inquiries  
Completed  
in 1996-97**

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

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

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

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

The Tribunal completed five inquiries under section 42 of SIMA in fiscal year 1996-97. Inquiry No. NQ-95-003 dealt with dry pasta, a food product. Inquiry No. NQ-95-004 dealt with bacteriological culture media, a clinical laboratory product. Two inquiries concerned stationery products: Inquiry No. NQ-95-005 which dealt with portable file cases and Inquiry No. NQ-96-001 which dealt with refill paper and spiral-bound notebooks. The fifth, Inquiry No. NQ-96-002, dealt with fresh garlic, an agricultural product. In 1995, the Canadian market for dry pasta exceeded \$100 million, while that for each of the other products was less than \$20 million.



<p><b>Dry Pasta</b> NQ-95-003</p>	<p>The Tribunal found that dumped and subsidized imports of dry pasta from Italy had not caused and were not threatening to cause material injury to the domestic industry. Canadian pasta manufacturers alleged that they had suffered material injury in the form of price suppression, price erosion, lost sales, loss of market share and significant financial losses. Although the Tribunal found material injury, it was of the opinion that there were a number of important factors unrelated to competition from Italian imports that appeared to have contributed to this situation. In addition, the Tribunal found that it was premium Italian brands that had captured the growth in the 450/500-g package size segment of the dry pasta market. The Tribunal noted that price suppression in the 900-g package size segment of the market appeared to be attributable to other factors and that Italian imports accounted for only a small part of this market. While recognizing that dry pasta from Italy would continue to be present in the domestic market, the Tribunal did not consider that there was an imminent threat of injury.</p>
<p><b>Bacteriological Culture Media</b> NQ-95-004</p>	<p>Bacteriological culture media (BCM) is produced and sold in two distinct forms. Accordingly, the Tribunal considered the question of injury from dumped imports from the United Kingdom and the United States separately for each class of BCM. In the case of dehydrated BCM, the Tribunal found that, although dumped imports had taken part of the market, other factors had caused the injury to the industry. Because of various considerations, including a decline in dumped imports, the Tribunal concluded that there was no threat of material injury to the domestic industry.</p> <p>In the case of prepared BCM, the Tribunal also concluded that dumped imports from the United States had not caused and were not threatening to cause material injury to the domestic industry. The Tribunal was not convinced that there had been price suppression nor that the sales that the industry had lost could be attributed to dumped imports. In addition, there was no indication that dumped imports would cause injury in the future.</p>
<p><b>Portable File Cases</b> NQ-95-005</p>	<p>The Tribunal found that dumped imports of portable file cases from the People’s Republic of China had not caused and were not threatening to cause material injury to the domestic industry. Moreover, the Tribunal found that there was no basis in SIMA for the industry’s claim of retardation. Although it was clear from the evidence that the domestic industry had suffered material injury, primarily in the form of financial injury, the Tribunal noted that numerous other factors had intervened to affect its performance. In particular, the Canadian market had undergone fundamental changes at the retail level which resulted in the repositioning of portable file cases for sale to consumers. Finally, the Tribunal saw no change in circumstance in the immediate future which would create a threat of material injury.</p>

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**Refill Paper and  
Spiral-Bound  
Notebooks**

NQ-96-001

As refill paper and spiral-bound notebooks are distinct products, the Tribunal considered the question of injury from dumped imports separately for each product. Despite a large loss of market share to imports of refill paper from Indonesia, the Tribunal could not attribute the injury suffered by the domestic industry to dumping. Indonesian sales to large Canadian retail accounts represented virtually all the market share lost by the domestic industry in 1995. However, these imports were found by the Deputy Minister to be undumped. There was, moreover, no evidence to indicate a likelihood of substantially increased dumped imports. The Tribunal, therefore, could not find a threat of injury due to dumped imports.

In the case of spiral-bound notebooks, the Tribunal also concluded that dumped imports from both Indonesia and Brazil had not caused and were not threatening to cause material injury to the domestic industry. Despite a large increase in imports from Indonesia, the Tribunal was not convinced that dumping had caused injury to the domestic industry. Sales of these imports were either well above the domestic industry's selling prices or found to be undumped. Imports from Brazil had not been a competitive factor in the market. Because the evidence showed that the level of imports from Indonesia was likely to decline and that most other imports were not found to be dumped, the Tribunal did not find a threat of material injury to the domestic industry. In the case of Brazil, the Tribunal observed that, because of declining volumes and competitive shortcomings of imports from Brazil, there was no indication of an imminent and foreseeable threat of material injury.

**Fresh Garlic**

NQ-96-002

The Tribunal found that dumped imports of fresh garlic from the People's Republic of China had caused injury to domestic growers. The Tribunal found that, while domestic growers were increasing acreage planted and volume harvested, imports from the People's Republic of China were growing rapidly, thereby preventing the industry from gaining market share in the fresh bulk market and causing growers to divert production to the seed market. The dumped Chinese imports also caused price erosion in the Canadian market. The Tribunal concluded that the domestic industry had the ability to increase production to meet a much greater proportion of demand for fresh garlic during the period from July to December of each year.

**Inquiries in  
Progress at the  
End of 1996-97**

There were two inquiries in progress at the end of 1996-97: *Polyiso Insulation Board* (Inquiry No. NQ-96-003), with respect to dumped imports from the United States, and *Concrete Panels* (Inquiry No. NQ-96-004), with respect to dumped imports from the United States into British Columbia and Alberta. In the two cases, the Tribunal applied its new procedures.

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

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

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

During 1996-97, the Tribunal completed a public interest investigation with respect to its finding of threat of material injury in the case of *Refined Sugar* (Inquiry No. NQ-95-002). The Tribunal issued a consideration (Public Interest Investigation No. PB-95-002), in which it stated that the public interest did not warrant the reduction or elimination of the duties and that, therefore, it would not report to the Minister of Finance under section 45 of SIMA. In one inquiry, the question of public interest was raised. As of March 31, 1997, the Tribunal had yet to give its view as to whether consideration of the public interest question was warranted.

**Reviews**

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

During the 1996-97 fiscal year, the Tribunal issued eight notices of expiry. They concerned findings and orders for the following products: aluminum coil stock and steel head and bottom rails, twisted polypropylene and nylon rope, toothpicks, machine tufted carpeting, yellow onions, rubber footwear, Iceberg lettuce, and bicycles and frames. The Tribunal decided that a review of the finding respecting toothpicks was not warranted, and the finding has expired. Reviews were initiated in five cases, including the case for which a notice of expiry had been issued in the previous fiscal year. Decisions on review for rubber footwear, Iceberg lettuce and bicycles and frames were pending at the end of the fiscal year.

Interested parties may also request a review at any time, pursuant to subsection 76(2) of SIMA. However, the Tribunal will initiate a review only if it determines that one is warranted, usually on the basis of changed circumstances. During the last fiscal year, the Tribunal decided that a request to review its findings on refined sugar was not warranted (Request for Review No. RD-95-001).

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**Reviews Completed in 1996-97**

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

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

In fiscal year 1996-97, the Tribunal completed six reviews. The order and findings in *Oil and Gas Well Casing* (Review No. RR-95-001), with respect to dumped imports originating in the Republic of Korea and the United States, *Carbon Steel Welded Pipe* (Review No. RR-95-002), with respect to dumped imports from Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil, and *Stainless Steel Welded Pipe* (Review No. RR-96-001), with respect to dumped imports from Taiwan, were continued without amendment. The orders and finding in *Boneless Manufacturing Beef* (Review No. RR-95-003), with respect to subsidized imports from the European Union, *Aluminum Coil Stock and Steel Head and Bottom Rails* (Review No. RR-96-002), with respect to dumped imports from Sweden, and *Twisted Polypropylene and Nylon Rope* (Review No. RR-96-003), with respect to dumped imports from the Republic of Korea, were rescinded.

**Reviews in Progress at the End of 1996-97**

Two reviews were in progress at the end of the fiscal year. They were *Machine Tufted Carpeting* (Review No. RR-96-004), with respect to dumped imports from the United States, and *Yellow Onions* (Review No. RR-96-005), with respect to dumped imports from the United States into British Columbia.

Table 2 summarizes the Tribunal's review activities during the fiscal year. Table 3 lists findings and orders in force as of March 31, 1997.

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**Advice Given  
Under Section 37  
of SIMA**

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

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

The Tribunal issued one advice during 1996-97. It concerned *Polyiso Insulation Board* (Reference No. RE-96-001). The Tribunal concluded that the evidence disclosed a reasonable indication that the dumping or subsidizing had caused material injury or was threatening to cause material injury to a domestic industry. The case subsequently proceeded to an inquiry under section 42 of SIMA. The case was in progress at the end of the fiscal year.

**Judicial or Panel  
Review of SIMA  
Decisions**

Anti-dumping and countervailing duty decisions can be judicially reviewed by the Federal Court of Canada on grounds of alleged denial of natural justice and error of fact or law.

In cases involving goods from the United States and Mexico, parties may request judicial review by the Federal Court of Canada or by a binational panel.

Table 4 lists the Tribunal's decisions under section 43 or 76 of SIMA that were before the Federal Court of Canada for judicial review in fiscal year 1996-97. There were no cases before a binational panel. The Federal Court of Canada set aside the Tribunal's finding of no material injury in the case of *Dry Pasta* (Inquiry No. NQ-95-003). The Tribunal has recommenced an inquiry under section 44 of SIMA. The Federal Court of Canada dismissed applications to review the Tribunal's decisions not to review its findings in *Refined Sugar* (Public Interest Investigation No. PB-95-002 and Request for Review No. RD-95-001).

**WTO Dispute  
Resolution**

Governments that are members of the WTO may appeal Tribunal injury findings or orders in anti-dumping and countervailing cases to the WTO. The launching of an appeal must be preceded by inter-governmental consultations. There are no appeals of Tribunal findings or orders before the appeal instances of the WTO.

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## TABLE 1

### Findings Issued Under Section 43 of SIMA Between April 1, 1996, and March 31, 1997, and Inquiries Under Section 42 of SIMA in Progress at Year End

Inquiry No.	Product	Country	Date of Finding	Finding
NQ-95-003	Dry Pasta	Italy	May 13, 1996	No Injury or Threat of Injury
NQ-95-004	Bacteriological Culture Media	United States and United Kingdom	May 31, 1996	No Injury or Threat of Injury
NQ-95-005	Portable File Cases	People's Republic of China	June 4, 1996	No Injury, Retardation or Threat of Injury
NQ-96-001	Refill Paper and Spiral-Bound Notebooks	Republic of Indonesia and Federative Republic of Brazil	September 27, 1996	No Injury or Threat of Injury
NQ-96-002	Fresh Garlic	People's Republic of China	March 21, 1997	Injury
NQ-96-003	Polyiso Insulation Board	United States	In Progress	
NQ-96-004	Concrete Panels	United States	In Progress	

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## TABLE 2

### Orders Issued Under Section 76 of SIMA Between April 1, 1996, and March 31, 1997, and Reviews in Progress at Year End

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Review No. or Expiry No.	Product	Country	Date of Order	Order
RR-95-001	Oil and Gas Well Casing	Republic of Korea and United States	July 5, 1996	Order Continued
RR-95-002	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil	July 25, 1996	Findings Continued
RR-95-003	Boneless Manufacturing Beef	European Union	July 22, 1996	Order Rescinded
RR-96-001	Stainless Steel Welded Pipe	Taiwan	September 12, 1996	Finding Continued
RR-96-002	Aluminum Coil Stock and Steel Head and Bottom Rails	Sweden	February 6, 1997	Finding Rescinded
RR-96-003	Twisted Polypropylene and Nylon Rope	Republic of Korea	February 21, 1997	Order Rescinded
LE-96-003	Toothpicks	United States	October 22, 1996	Review not Warranted
RR-96-004	Machine Tufted Carpeting	United States	In Progress	
RR-96-005	Yellow Onions	United States	In Progress	

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## TABLE 3

### Findings and Orders in Force as of March 31, 1997<sup>1</sup>

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-91-006	April 21, 1992	Machine Tufted Carpeting	United States	
RR-91-004	May 22, 1992	Yellow Onions	United States	CIT-1-87 (April 30, 1987)
RR-92-001	October 21, 1992	Waterproof Rubber Footwear	Czechoslovakia, Poland, Republic of Korea, Taiwan, Hong Kong, Malaysia, Yugoslavia and People's Republic of China	ADT-4-79 (May 25, 1979) ADT-2-82 (April 23, 1982) R-7-87 (October 22, 1987)
NQ-92-001	November 30, 1992	Iceberg Lettuce	United States	
NQ-92-002	December 11, 1992	Bicycles and Frames	Taiwan and People's Republic of China	
NQ-92-004	January 20, 1993	Gypsum Board	United States	
RR-92-003	February 25, 1993	Pocket Photo Albums and Refill Sheets	Japan, Republic of Korea, People's Republic of China, Hong Kong, Taiwan, Singapore, Malaysia and Federal Republic of Germany	CIT-11-87 (February 26, 1988)
NQ-92-007	May 6, 1993	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Belgium, Brazil, Czech Republic, Denmark, Federal Republic of Germany, Romania, United Kingdom and Former Yugoslav Republic of Macedonia	
NQ-92-009	July 29, 1993	Cold-Rolled Steel Sheet Products	Federal Republic of Germany, France, Italy, United Kingdom and United States	

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



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## Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
NQ-93-001	October 18, 1993	Copper Pipe Fittings	United States	
NQ-93-002	November 19, 1993	Preformed Fibreglass Pipe Insulation	United States	
RR-93-001	November 23, 1993	Tillage Tools	Brazil	ADT-11-83 (December 28, 1983) R-9-88 (November 24, 1988)
RR-93-003	January 18, 1994	Paint Brushes and "Heads"	People's Republic of China	ADT-6-84 (June 20, 1984) R-7-84 (September 28, 1984) R-13-88 (January 19, 1989)
NQ-93-003	April 22, 1994	Synthetic Baler Twine	United States	
NQ-93-004	May 17, 1994	Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Plate	Italy, Republic of Korea, Spain and Ukraine	
NQ-93-005	June 22, 1994	12-Gauge Shotshells	Czech Republic and Republic of Hungary	
NQ-93-006	July 20, 1994	Black Granite Memorials and Black Granite Slabs	India	
NQ-93-007	July 29, 1994	Corrosion-Resistant Steel Sheet Products	Australia, Brazil, France, Federal Republic of Germany, Japan, Republic of Korea, New Zealand, Spain, Sweden, United Kingdom and United States	
NQ-94-001	February 9, 1995	Delicious and Red Delicious Apples	United States	

## Findings and Orders in Force (cont'd)

Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-94-002	March 21, 1995	Canned Ham and Canned Pork-Based Luncheon Meat	Denmark, Netherlands and European Union	GIC-1-84 (August 7, 1984) RR-89-003 (March 16, 1990)
RR-94-003	May 2, 1995	Women's Footwear	People's Republic of China	NQ-89-003 (May 3, 1990)
RR-94-004	June 5, 1995	Carbon Steel Welded Pipe	Republic of Korea	ADT-6-83 (June 28, 1983) RR-89-008 (June 5, 1990)
RR-94-005	July 5, 1995	Refill Paper	Federative Republic of Brazil	NQ-89-004 (July 6, 1990)
RR-94-006	August 25, 1995	Photo Albums with Self-Adhesive Leaves and Self-Adhesive Leaves	Republic of Korea, Hong Kong, People's Republic of China, Singapore, Malaysia, Taiwan, Indonesia, Thailand and the Philippines	ADT-4-74 (January 24, 1975) R-3-84 (August 24, 1984) CIT-18-84 (April 26, 1985) CIT-10-85 (February 14, 1986) CIT-5-87 (November 3, 1987) RR-89-012 (September 4, 1990) NQ-90-003 (January 2, 1991)
RR-94-007	September 14, 1995	Whole Potatoes	United States	ADT-4-84 (June 4, 1984) CIT-16-85 (April 18, 1986) RR-89-010 (September 14, 1990)
NQ-95-001	October 20, 1995	Caps, Lids and Jars	United States	
NQ-95-002	November 6, 1995	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	

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## Findings and Orders in Force (cont'd)

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Review No. or Inquiry No.	Date of Decision	Product	Country	Earlier Decision No. and Date
RR-95-001	July 5, 1996	Oil and Gas Well Casing	Republic of Korea and United States	CIT-15-85 (April 17, 1986) R-7-86 (November 6, 1986) RR-90-005 (June 10, 1991)
RR-95-002	July 25, 1996	Carbon Steel Welded Pipe	Argentina, India, Romania, Taiwan, Thailand, Venezuela and Brazil	NQ-90-005 (July 26, 1991) NQ-91-003 (January 23, 1992)
RR-96-001	September 12, 1996	Stainless Steel Welded Pipe	Taiwan	NQ-91-001 (September 5, 1991)
NQ-96-002	March 21, 1997	Fresh Garlic	People's Republic of China	

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## TABLE 4

### Cases Before the Federal Court of Canada Between April 1, 1996, and March 31, 1997

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Case No.	Product	Country	File No./ Status
PB-95-002 and RD-95-001	Refined Sugar	United States, Denmark, Federal Republic of Germany, Netherlands, United Kingdom and European Union	A-654-96 and A-524-96 Applications Dismissed
NQ-95-003	Dry Pasta	Italy	A-473-96 Tribunal's Finding Set Aside Matter Referred Back to Tribunal for New Hearing

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# CHAPTER IV

## APPEALS

### Introduction

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

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

### Rules of Procedure

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

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

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## Hearings

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

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

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

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

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

**Appeals  
Considered in the  
Last Fiscal Year**

During the 1996-97 fiscal year, the Tribunal heard 163 appeals of which 129 related to the *Customs Act*, 30 to the *Excise Tax Act* and 4 to SIMA. Decisions were issued in 158 cases, of which 114 were heard during fiscal year 1996-97.

**Decisions on Appeals**

<b>Act</b>	<b>Allowed</b>	<b>Allowed in Part</b>	<b>Dismissed</b>	<b>Total</b>
<i>Customs Act</i>	24	6	84	114
<i>Excise Tax Act</i>	6	4	28	38
<i>SIMA</i>	1	1	4	6

The table at the end of this chapter lists decisions on appeals rendered in fiscal year 1996-97.

**Summary of  
Selected  
Decisions**

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

***PMI Food Equipment  
Group Canada, A  
Division of Premark  
Canada Inc. v. The  
Deputy Minister of  
National Revenue***

*AP-95-123*

*Decision:  
Appeal allowed in part  
(January 10, 1997)*

This was an appeal under section 67 of the *Customs Act* in which the Tribunal considered whether Revenue Canada correctly included royalties in the value for duty of certain appliances and parts imported by the appellant. Pursuant to subparagraph 48(5)(a)(iv) of the *Customs Act*, royalties and licence fees, including payments for patents, trade-marks and copyrights, in respect of the imported goods that the purchaser must pay, must be added to the price paid or payable in the sale of the goods for export to Canada. In the present case, Premark Canada Inc. had entered into licence agreements with two US companies (the licensors) granting Premark, among other things, the rights to sell and service certain products in Canada, as well as manufacture certain products in Canada, in exchange for which it paid the licensors a royalty calculated as a percentage of the proceeds of sales and services realized by Premark on all products and services covered by the agreements. No royalty was included in the value for duty of the goods imported by the appellant. Revenue Canada ruled that such portion of the royalties paid by the appellant that could be attributed to the proceeds of the sales of the imported goods had to be included in the value for duty of the goods pursuant to paragraph 48(5)(a)(iv) of the *Customs Act*.

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

*AP-95-090 and  
AP-95-166*

*Decision:  
Appeals allowed  
(August 15, 1996)*

The Tribunal allowed the appeal in part. The Tribunal was of the opinion that the royalty payments made by the appellant were “in respect of” the goods, as contemplated by subparagraph 48(5)(a)(iv) of the *Customs Act*. However, the Tribunal found that only the royalties paid in respect of goods purchased from the licensors should be added to the price paid or payable for the goods pursuant to subparagraph 48(5)(a)(iv). In the Tribunal’s view, the licensors were in a position to exert sufficient control over these sales for the payment of the royalties to constitute “a condition of the sale” under subparagraph 48(5)(a)(iv). However, royalties should not be added to the price paid or payable for goods purchased from other related companies and third-party manufacturers, as the licensors did not exert sufficient control or influence over these sales for the payment of any royalties to constitute “a condition of the sale” under subparagraph 48(5)(a)(iv).

The Tribunal’s decision was appealed to the Federal Court of Appeal by both the appellant and the Deputy Minister.

These were appeals under section 67 of the *Customs Act* in which the Tribunal considered whether Revenue Canada had correctly determined the value for duty of imported vehicles by the appellant. The value for duty at the time of importation was based on the invoice price. Subsequently, the invoice price was adjusted to reflect reductions in the final negotiated price and the appellant requested a re-appraisal of the value for duty under section 60 of the *Customs Act* to take into account the price changes. The Deputy Minister found that, in calculating the value for duty, reductions in the final negotiated price issued after the importation of the goods in issue should be disregarded in accordance with paragraph 48(5)(c) of the *Customs Act*. Subsections 48(1) and (5) of the *Customs Act* provide that the value for duty of imported goods is their transaction value or, more precisely, the price paid or payable adjusted by adding and deducting different amounts and, pursuant to paragraph 48(5)(c) of the *Customs Act*, “by disregarding any rebate of, or other decrease in, the price paid or payable for the goods that is effected after the goods are imported.”

The evidence showed that there existed an understanding between the appellant, the manufacturer, Toyota Motor Corporation of Japan, and the exporter, Mitsui & Co., Ltd., that the price stipulated on the Canada Customs Invoice was a provisional price estimated for purposes of calculating the value for duty and that the final selling price of the vehicles would only be known at the conclusion of the negotiations. The Tribunal found that the credit note given by Mitsui & Co., Ltd. to the appellant did not constitute a rebate of, or other decrease in, the price paid or payable for the goods in issue within the meaning of paragraph 48(5)(c) of the *Customs Act*. In the Tribunal’s view, the purpose of the credit note was not to give the appellant a rebate nor to decrease the price paid or payable for the vehicles, but simply to reflect the actual selling price of the goods



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in issue. In reaching its conclusion, the Tribunal relied on the decision of the Federal Court of Canada - Trial Division in *Nordic Laboratories v. The Deputy Minister of National Revenue* and the discussion in that case of the Tribunal's decision in *Quadra Chemicals Ltd. v. The Deputy Minister of National Revenue*.

The Tribunal's decision was appealed to the Federal Court of Appeal by the Deputy Minister.

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In the past fiscal year, the Tribunal dismissed a series of appeals on the basis that it did not have jurisdiction to hear them. Sixty of these appeals dealt with the importation of eyewear material. One appeal, *Fisher Scientific Ltd. v. The Deputy Minister of National Revenue*, dealt with the importation of goods described as "automated immunoassay systems" or "AIA-Pack" test kits, while the other, *M & S X-Ray Services Ltd. v. The Deputy Minister of National Revenue*, dealt with the importation of tables used by chiropractors in chiropractic diagnosis. Both these cases were dismissed on grounds similar to those for the dismissal of the eyewear appeals, which are summarized below.

## **Eyewear Appeals**

Various appeals were filed with the Tribunal pursuant to section 67 of the *Customs Act*. The appellants requested that certain eyewear material be re-classified under the *Customs Tariff*. They appealed decisions of the Deputy Minister to cancel requests for re-determination of tariff classifications purportedly made pursuant to paragraph 60(1)(b), 64(a) or 64(d) or subparagraph 64(e)(i) of the *Customs Act*. All of the requests for re-determination under section 64 of the *Customs Act* were filed with the Deputy Minister in order to have certain goods re-classified in accordance with a decision of the Tribunal dealing with similar goods. The Deputy Minister refused to entertain a request for re-determination of the tariff classification pursuant to paragraph 60(1)(b) because the Minister did not deem it advisable to extend to two years the deadline for filing the request. The Deputy Minister refused to entertain requests for re-determination of tariff classifications under section 64 because the *Customs Act* provides that requests for re-determination must be filed under section 60 or 63 of the *Customs Act*.

The Tribunal was of the view that these appeals raised the following jurisdictional issues: (1) whether decisions of the Deputy Minister to refuse to entertain requests for re-determination of tariff classifications constitute decisions for purposes of section 67 of the *Customs Act*, i.e. whether the Tribunal has jurisdiction to hear the appeals; and (2) in the event that the Tribunal finds that the decisions do not constitute decisions for purposes of section 67, whether it has jurisdiction to compel the Deputy Minister to exercise his statutory duty.

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**Access to  
Confidential  
Information by  
Counsel for  
Respondent**

The Tribunal found that it did not have jurisdiction to hear the appeals, as the decisions of the Deputy Minister to refuse to entertain requests for re-determination of tariff classifications pursuant to paragraph 60(1)(b), 64(a) or 64(d) or subparagraph 64(e)(i) of the *Customs Act* did not constitute decisions for purposes of section 67. Relying on the decision of the Federal Court of Canada - Trial Division in *Mueller Canada Inc. v. The Minister of National Revenue and The Deputy Minister of National Revenue*, the Tribunal took the view that there clearly must be a decision from the Deputy Minister with respect to the merits of the tariff classification in order to give the Tribunal jurisdiction under section 67 of the *Customs Act*. The Tribunal found that this was not the case in these appeals. Furthermore, the Tribunal concluded that any order directing the Deputy Minister to make a re-determination of the tariff classifications would be an order of *mandamus*, an equitable relief that the Tribunal has clearly no authority to grant. Section 18 of the *Federal Court Act* clearly provides that only the Federal Court of Canada has jurisdiction to make such an order. Consequently, the appeals were dismissed.

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The Tribunal heard an interlocutory motion by means of a telephone conference call in a series of appeals filed by Nike Canada Ltd. pursuant to section 67 of the *Customs Act*. The appellant had filed both public and confidential versions of its brief. Counsel for the respondent requested that the appellant provide him with a copy of the material contained in the confidential brief. The appellant was willing to allow counsel for the appellant to disclose the confidential information to the respondent for the limited purpose of obtaining instruction with respect to the appeals, provided counsel for the respondent signed an amended Form III, Declaration and Undertaking, as provided for under subrule 16(1) of the Tribunal's Rules of Procedures. Counsel for the respondent refused and requested that the Secretary provide the respondent, through him, with a copy of the appellant's confidential brief. The Tribunal indicated to counsel for the respondent that he could only obtain a copy of the confidential brief if he filed a signed declaration and undertaking. Counsel for the respondent refused and filed a notice of motion with the Tribunal requesting an order: (1) declaring that the respondent and his counsel are entitled to be provided with a true copy of the confidential brief filed by the appellant, without execution by counsel for the respondent of the declaration and undertaking; and (2) requiring either the Secretary or the appellant to provide the respondent, through his counsel, with a copy of the confidential brief.

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Relying on its decision in *Preformed Fibreglass Pipe Insulation*, which dealt with a similar issue and which was upheld by the Federal Court of Appeal, the Tribunal held that the only means by which it can disclose confidential information to any party to a proceeding before it, including appeals, is through subsection 45(3) of the CITT Act. That subsection, in conjunction with the Tribunal's Rules of Procedure, provides that the Tribunal may only disclose confidential information to counsel if that counsel has filed a declaration and undertaking, absent the consent of the party who has filed the confidential information. The Tribunal was of the opinion that subsection 45(3) of the CITT Act does not distinguish between either classes or types of parties or proceedings. As such, the respondent must be treated in the same manner as any other party to a proceeding before the Tribunal, including appeals. Furthermore, the Tribunal held that subsection 45(1) of the CITT Act cannot be used as a basis for the Tribunal to disclose confidential information to public servants. In the Tribunal's view, when the respondent appears before the Tribunal in an appeal, he does so as a party to that appeal and not in any capacity relating to the gathering of information or the making of determinations under the *Customs Act*. As such, sections 40, 42 and 107 of the *Customs Act* do not provide the respondent or the respondent's officials with an entitlement to confidential information in a proceeding before the Tribunal.

The respondent applied for judicial review of the Tribunal's decision in the Federal Court of Appeal. The application for judicial review was dismissed. The Federal Court of Appeal agreed with its own finding in *Preformed Fibreglass Pipe Insulation*, which concluded that sections 44 to 48 of the CITT Act constitute a complete code with respect to the disclosure of confidential information in proceedings before the Tribunal. The Federal Court of Appeal held that subsection 45(3) of the CITT Act sets out the only conditions under which information provided by one party and designated by it as confidential can be disclosed to another party. In the Federal Court of Appeal's view, subsection 45(3) of the CITT Act only contemplates disclosure of confidential information to counsel on conditions imposed by the Tribunal, namely, the signing of a declaration and undertaking, which will, in the absence of the consent of the person who originally provided the information, prevent its disclosure to any party (including counsel's client) or to any business competitor. The Federal Court of Appeal also agreed with the Tribunal's interpretation of subsection 45(1) of the CITT Act. Accordingly, the Federal Court of Appeal ruled that counsel for the respondent had to sign a declaration and undertaking, with which he would have to comply, subject to the modifications to which counsel for the appellant was prepared to consent.

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**Appeal Decisions Rendered Under Section 67 (Formerly Section 47) of the *Customs Act*, Section 81.27 (Formerly Section 51.27) of the *Excise Tax Act* and Section 61 of SIMA Between April 1, 1996, and March 31, 1997**

Appeal No.	Appellant	Date of Decision	Decision
<b><i>Customs Act</i></b>			
AP-95-120	Bazaar & Novelty Co., A Division of Bingo Press & Specialty Limited	April 10, 1996	Allowed
AP-94-365, AP-94-375 and AP-95-242	Vilico Optical Inc.	May 7, 1996	Dismissed
AP-94-369	Canamalco Inc.		
AP-94-370, AP-95-025 and AP-95-058	Neostyle Canada Ltd.		
AP-94-371, AP-95-043 and AP-95-056	Nicolet America Inc.		
AP-94-372, AP-95-024, AP-95-036, AP-95-060, AP-95-105 and AP-95-106	Carl Zeiss Optical Inc.		
AP-94-373 and AP-95-042	Optiq Ltd.		
AP-94-374	Alta Vision Laboratories Ltd.		
AP-94-376 and AP-95-005	Western Optical Co. Inc.		
AP-94-377 and AP-95-107	Viva Optique Canada Inc.		
AP-94-378, AP-95-035 and AP-95-057	KDS Optical Company Ltd.		
AP-94-380, AP-95-037 and AP-95-054	Anthony Martin Eyewear Inc.		
AP-94-381	Opal Optical Ltd.		
AP-94-382	Rodenstock Canada Inc.		
AP-94-383	Crown Optical Centre Ltd.		
AP-94-384	KW Optical Limited		
AP-95-003 and AP-95-062	Savvy Eyewear Canada		
AP-95-004 and AP-95-027	AOCO Limited		
AP-95-006, AP-95-028, AP-95-039, AP-95-104 and AP-95-248	Centennial Optical Limited		
AP-95-026, AP-95-030, AP-95-031, AP-95-059 and AP-95-222	Optique Forte Ltd.		
AP-95-029 and AP-95-040	Diplomat-Ambassador Eyewear Ltd.		
AP-95-032, AP-95-034 and AP-95-038	Renaissance Eyewear Inc.		
AP-95-033 and AP-95-052	Compagnie d'Optique Polaire Inc.		
AP-95-041	Safilo Canada Inc.		
AP-95-053	Laboratoire d'Optique de Hull Inc.		
AP-95-055	Hakim Optical Laboratory Ltd.		
AP-95-223	Nicolet Optique Inc.		

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## Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-94-324	Fisher Scientific Ltd.	May 7, 1996	Dismissed
AP-94-337	M & S X-Ray Services Ltd.	May 7, 1996	Dismissed
AP-94-142	Winners Only (Canada) Ltd.	May 13, 1996	Dismissed
AP-95-099 and AP-95-129	Carol Cable Company Canada Ltd.	May 14, 1996	Dismissed
AP-95-121	Centennial Optical Limited	May 14, 1996	Dismissed
AP-95-266	Canstor Consumer Storage Products Inc.	June 27, 1996	Dismissed
AP-95-089	Heco Medical Group Inc.	July 19, 1996	Allowed
AP-95-076	L&F Canada Inc.	August 8, 1996	Allowed
AP-95-090 and AP-95-166	Toyota Canada Inc.	August 15, 1996	Allowed
AP-95-096	Lloydaire, Division of Eljer Manufacturing Canada Inc.	August 15, 1996	Allowed
AP-94-150	Jana & Company	September 3, 1996	Allowed
AP-94-333	The Source Enterprises Limited	September 4, 1996	Allowed
AP-95-100	Rutherford Controls Ltd.	September 9, 1996	Dismissed
AP-94-151	Elise Ammon	October 3, 1996	Dismissed
AP-95-109	Bennett Fleet Inc.	October 7, 1996	Allowed
AP-94-199	Flora Distributors Ltd.	October 8, 1996	Dismissed
AP-95-016	Sharp Electronics of Canada Ltd.	October 23, 1996	Allowed
AP-95-098	Canadian Fracmaster Ltd.	October 31, 1996	Dismissed
AP-95-138	Arpac Storage Systems Corporation	October 31, 1996	Allowed
AP-95-170	Nalley's Canada Limited	October 31, 1996	Dismissed
AP-95-189	Asea Brown Boveri Inc.	November 5, 1996	Allowed

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## Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-94-076	Rosarium Enr.	November 6, 1996	Dismissed
AP-95-001	Ambrosia Chocolate Company	November 7, 1996	Dismissed
AP-95-269 and AP-95-285	Uvex Toko Canada Ltd.	November 7, 1996	Allowed
AP-95-308	City Wide Sports	November 7, 1996	Dismissed
AP-95-194	Atlas Alloys, A Division of Rio Algom Limited	November 22, 1996	Allowed in part
AP-95-044	Readi-Bake Inc.	December 2, 1996	Dismissed
AP-94-307	Northern Alberta Processing Co.	December 2, 1996	Allowed in part
AP-95-074	Superfine Import Co. Ltd.	December 3, 1996	Allowed in part
AP-95-277	Jascor Home Products Inc.	December 3, 1996	Allowed
AP-95-265	Innovation Specialties Inc.	December 6, 1996	Dismissed
AP-95-299 and AP-96-053	816392 Ontario Ltd., O/A Freedom Motors	December 6, 1996	Allowed
AP-95-252	I.D. Foods Superior Corp.	December 12, 1996	Dismissed
AP-95-262	Sony of Canada Ltd.	December 12, 1996	Allowed
AP-95-123	PMI Food Equipment Group Canada, A Division of Premark Canada Inc.	January 10, 1997	Allowed in part
AP-95-253	Bristol Uniforms North America Inc.	January 14, 1997	Allowed
AP-96-006	Robert Gustas	January 14, 1997	Dismissed
AP-95-126 and AP-95-255	Mattel Canada Inc.	January 15, 1997	Allowed in part
AP-95-230	Euro-Line Appliances	January 31, 1997	Dismissed
AP-95-020, AP-95-046 and AP-96-069	Black & Decker Canada Inc.	February 6, 1997	Dismissed
AP-95-047	Upper 49th Imports Inc.	February 7, 1997	Allowed

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## Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-95-240	Integrated Protection Inc.	February 7, 1997	Dismissed
AP-95-254	Grinnell Corp. of Canada Ltd., dba Grinnell Fire Protection	February 14, 1997	Allowed
AP-96-054	Sunbeam Corporation (Canada) Limited	February 14, 1997	Allowed
AP-96-061	Noma Industries Limited	February 14, 1997	Allowed
AP-95-284	Baker Textiles Inc.	February 17, 1997	Allowed
AP-95-233	S.C. Johnson and Son, Limited	February 21, 1997	Dismissed
AP-96-048	Canadian Optical Supply Company Ltd.	February 21, 1997	Dismissed
<b><i>Excise Tax Act</i></b>			
AP-94-315	Gillin Road Group Home c/o Brantford and District Association for Community Living	April 2, 1996	Dismissed
AP-95-051	Groupe Unimédia Inc., Division Litho Prestige	April 12, 1996	Allowed
AP-92-199	Codispoti's Creative Jewelry Co. Ltd.	April 17, 1996	Dismissed
AP-95-178	Sharp Design Products Inc.	May 10, 1996	Dismissed
AP-94-113	Doug and Marcy Beddome	May 23, 1996	Dismissed
AP-95-071	Advance-Interface Electronic Inc.	May 30, 1996	Dismissed
AP-94-003	Hebert's Flooring Ltd.	August 20, 1996	Dismissed
AP-93-273	Arnold Forsythe	September 9, 1996	Dismissed
AP-95-135	Southam Inc., RBW Graphics Division	September 10, 1996	Dismissed
AP-94-276	L.J. Chopp and Associates	September 11, 1996	Dismissed
AP-92-081	Shoppers Autobody Refinishers Ltd.	September 11, 1996	Dismissed
AP-95-118	King Framing	October 7, 1996	Allowed in part
AP-93-011	Noreen P. Russell	October 8, 1996	Dismissed

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## Appeal Decisions Rendered (cont'd)

Appeal No.	Appellant	Date of Decision	Decision
AP-92-063	John Stephen Richards	October 15, 1996	Dismissed
AP-93-283	Electrol Distributors Ltd.	October 23, 1996	Dismissed
AP-95-196	Denman Graphics Ltd.	October 24, 1996	Dismissed
AP-95-066	The British Columbia Mental Health Society	October 25, 1996	Dismissed
AP-95-045	Sidewinder Conversions Ltd.	October 31, 1996	Allowed in part
AP-95-171	Waite Air Photos Inc.	October 31, 1996	Dismissed
AP-95-259	Paccar of Canada Ltd.	November 22, 1996	Allowed
AP-93-251	Wellsley Investments Inc.	December 2, 1996	Dismissed
AP-94-119	Inland Re-Refining Company Limited	December 3, 1996	Dismissed
AP-94-148	Suncor Inc.	December 19, 1996	Allowed in part
AP-94-327	Double N Earth Movers Ltd.	December 19, 1996	Dismissed
AP-94-330	Erin Michaels Mfg. Inc.	January 10, 1997	Allowed
AP-94-335	Épicerie Chez Léonard	January 14, 1997	Dismissed
AP-96-025, AP-96-026 and AP-96-027	Francon-Lafarge, Division of Lafarge Canada Inc.	February 10, 1997	Dismissed
AP-95-181	Lawton's Drug Stores Limited	February 14, 1997	Allowed
AP-95-124	Northwest Airlines, Inc.	February 21, 1997	Dismissed
AP-95-179	Gerald The Swiss Goldsmith	February 21, 1997	Allowed in part
AP-95-304	Kott Truss Inc.	February 21, 1997	Allowed
AP-95-238	Ralph Roberts	March 18, 1997	Allowed
AP-95-174, AP-95-175 and AP-95-176	Burrows Lumber CD Limited, Burrows Lumber Inc. and Wildwood Forest Products Inc.	March 21, 1997	Dismissed
AP-96-086	Intraurban Projects	March 25, 1997	Dismissed



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## Appeal Decisions Rendered (cont'd)

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Appeal No.	Appellant	Date of Decision	Decision
<b><i>Special Import Measures Act</i></b>			
AP-95-079	J.B. Multi-National Trade Inc.	October 2, 1996	Dismissed
AP-95-093	Flortech Systems Ltd.	October 17, 1996	Dismissed
AP-95-258	Specialized Bicycle Components Canada, Inc.	October 22, 1996	Allowed in part
AP-95-008	Paulmar Cycle Inc., Division of Marr's Leisure Holdings Inc. and Marr's Leisure Products Inc.	November 8, 1996	Dismissed
AP-95-084	Marr's Leisure Products Inc.	November 8, 1996	Dismissed
AP-96-001	Renaissance Imports Ltd.	February 7, 1997	Allowed

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# CHAPTER V

## ECONOMIC, TRADE, TARIFF AND SAFEGUARD INQUIRIES

### Introduction

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

### Tariff-Related Inquiries

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

### Textile Reference

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

### Scope of the Reference

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

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

<b>Types of Relief Available</b>	<p>The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several, partial or complete, tariff lines, to company-, textile- and/or end-use-specific tariff provisions. The recommendation could be for tariff relief for either a specific or an indeterminate period of time. However, the Tribunal will only recommend tariff relief that is administrable on a cost-effective basis.</p>
<b>Notification of a Request</b>	<p>Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice announcing the request. The minimum period of time for the notification of a request before an investigation is commenced is 30 days.</p> <p>This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.</p>
<b>Investigations</b>	<p>When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as Revenue Canada, the Department of Foreign Affairs and International Trade, the Department of Industry and the Department of Finance. The notice is also published in the <i>Canada Gazette</i>.</p> <p>In any investigation, interested parties include domestic producers, certain associations and other persons who are entitled to be heard by the Tribunal because their rights or pecuniary interests may be affected by the Tribunal's recommendations. Interested parties are given notice of the request and can participate in the investigation. Interested parties include competitors of the requester, suppliers of goods that are identical to or substitutable for the textile input and downstream users of goods produced from the textile input.</p> <p>To prepare a staff investigation report, the Tribunal staff gathers information through such means as plant visits or questionnaires. Information is obtained from the requester and interested parties, such as a domestic supplier of the textile input, for the purpose of determining whether the tariff relief sought will maximize net economic gains for Canada.</p>

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	<p>In normal circumstances, a public hearing is not required, and the Tribunal will dispose of the matter on the basis of the full written record, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal.</p>
	<p>The procedures developed for the conduct of the Tribunal's investigations envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department or agency or other party.</p>
	<p>Where confidential information is provided to the Tribunal, such information falls within the protection of the CITT Act. Accordingly, the Tribunal will only distribute confidential information to counsel who are acting on behalf of a party and who have filed a declaration and undertaking.</p>
<p><b>Recommendations to the Minister</b></p>	<p>The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 120 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, the Tribunal will issue its recommendations within any earlier specified time frame which the Tribunal determines to be appropriate. The Tribunal will recommend the reduction or removal of customs duties on a textile input where it will maximize net economic gains for Canada.</p>
<p><b>Review Process</b></p>	<p>Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may make a request to the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify such a request.</p>
<p><b>Annual Status Report</b></p>	<p>In accordance with the terms of reference received by the Tribunal directing it to conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their manufacturing operations, the Tribunal provided the Minister of Finance, on November 29, 1996, with its second annual status report on the investigation process. The status report covered the period from October 1, 1995, to September 30, 1996. In the course of</p>

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	<p>preparing the status report, the Tribunal invited its stakeholders to comment on proposed changes to the investigation process. The Tribunal heard oral submissions on June 5, 1996.</p>
<p><b>Recommendations Submitted During 1996-97</b></p>	<p>During fiscal year 1996-97, the Tribunal issued 23 reports to the Minister of Finance which related to 56 requests for tariff relief, plus a reference from the Minister of Finance for a further investigation into a recommendation previously made by the Tribunal. At year end, 10 requests were outstanding, of which investigations had been commenced in respect of 8 requests. Table 1 at the end of this chapter summarizes these activities.</p>
<p><b>Recommendations in Place</b></p>	<p>By the end of fiscal year 1996-97, the Government had implemented 34 recommendations by the Tribunal. Table 2 provides a summary of recommendations implemented to date.</p> <p>A summary of a representative sample of Tribunal recommendations issued during the fiscal year follows.</p>
<p><b><i>Paris Star Knitting Mills Inc.</i></b> <i>TR-95-037</i></p>	<p>The Tribunal recommended to the Minister of Finance that the customs duty on importations of printed woven fabrics or blends thereof that contain 85 percent or more by weight of viscose or cuprammonium rayon and 15 percent or less by weight of other materials, including linen and metallic yarns, with a value for duty of \$5/m<sup>2</sup> or more, for use in the manufacture of women's apparel, including blouses, dresses, skirts, shorts, jackets and pants, be removed for an indeterminate period. In its report, the Tribunal indicated that the higher-priced fabrics from Europe do not impact on any production or value-added operation in Canada and should be allowed duty-free entry into Canada. The Tribunal estimated that the granting of such tariff relief would result in a net commercial benefit in excess of \$500,000 per annum.</p>

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***Fantastic-T Knitter  
Inc., and B.C.  
Garment Factory Ltd.  
and Global Garment  
Factory Ltd.***

*TR-95-015 to  
TR-95-032,  
TR-95-038 to  
TR-95-042,  
TR-95-046,  
TR-95-048 to  
TR-95-050 and  
TR-95-055*

The Tribunal recommended to the Minister of Finance that the 28 requests for tariff relief concerning certain circular knitted fabrics, for use in the production of men's and boys' shirts, pullovers and pants, and of women's and girls' blouses, pants, T-shirts and tops, not be granted. The Tribunal was persuaded that the effect of tariff removal would be detrimental not only to domestic production of fabrics made from combed cotton yarns but also to domestic production of fabrics made from carded cotton yarns. Since domestic knitted fabric production is concentrated in the latter sector, it was the Tribunal's view that the consequences of tariff relief for the domestic knitting industry would be considerable, even if tariff relief were extended only to fabrics made from combed cotton yarns.

***Beco Industries Ltd.***

*TR-95-035  
TR-95-043 and  
TR-95-044*

The Tribunal recommended to the Minister of Finance that tariff relief on importations of: woven fabric, containing at least 70 percent but less than 85 percent by weight of cotton, mixed with polyester fibres, printed, measuring less than 250 decitex per single yarn, of widths ranging from 170 to 240 cm, of weights ranging from 90 to 110 g/m<sup>2</sup>, for use in the manufacture of comforters, pillow cases, pillow shams, dust ruffles, draperies, valances, table rounds and duvet covers; and woven fabric, solely of cotton, printed, measuring less than 300 decitex per single yarn, of widths ranging from 170 to 240 cm, of weights ranging from 85 to 110 g/m<sup>2</sup>, for use in the manufacture of comforters, not be granted. With regard to the cotton/polyester fabric, the Tribunal concluded that it competes with fabrics made in Canada, that the end products made from the imported fabric compete with end products manufactured in Canada from domestically produced fabrics and that the costs ensuing from tariff relief would greatly outweigh any benefits that would result if tariff relief were granted. With regard to the cotton fabric, the Tribunal concluded that domestically produced cotton/polyester fabrics are substitutable for the imported cotton fabric used in the manufacture of budget comforters and that the price at which the budget comforters are available on the market has an influence on the price obtainable by other manufacturers of comforters. Consequently, granting tariff relief on the imported cotton fabric would have serious adverse effects on both the domestic textile producers and the manufacturers of comforters that use domestically produced fabrics.

***Sealy Canada Ltd.***

*TR-95-056 and*

The Tribunal recommended to the Minister of Finance that the customs duty on importations of: woven fabrics of textured and non-textured yarns of polyester, polypropylene or rayon; printed warp-knit fabrics of polyester filament yarns; and warp-knit (stitch-bonded) fabrics, for use as ticking in the production of

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TR-95-056A

mattresses, be removed for an indeterminate period of time. The Tribunal noted that the only textile manufacturer which appeared to be able to supply identical or substitutable fabrics, Rayonese Textile Inc., supported the request. Consequently, the Tribunal concluded that no domestic production would be affected by removing the duty on the fabrics and that such removal would result in significant savings and have a positive impact on the competitiveness of Sealy Canada Ltd. and other mattress manufacturers in the domestic market.

Further to the Tribunal's recommendation, officials at Revenue Canada determined that the tariff relief subsequently provided by the Minister of Finance (Order in Council PC 1996-1554) did not cover all of the fabrics originally requested by Sealy Canada Ltd. Accordingly, the Minister of Finance requested the Tribunal, pursuant to section 19 of the CITT Act, to inquire into whether the tariff relief should be extended. Following an expedited inquiry, in which no domestic textile producers opposed the extension of tariff relief, the Tribunal concluded that there would be net economic gains from the proposed relief and, accordingly, recommended that tariff relief be extended.

**Buckeye Industries**

TR-95-063

The Tribunal recommended to the Minister of Finance that the customs duty on importations originating in the United States of: dyed, 3-thread or 4-thread twill weave fabrics, containing 65 percent by weight of polyester staple fibres and 35 percent by weight of cotton, having in the warp 415 yarns or more per 10 cm and in the weft 240 yarns or more per 10 cm, of a weight of 160 g/m<sup>2</sup> or more, but not exceeding 190 g/m<sup>2</sup>, for use in the manufacture of men's shirts; and dyed, 3-thread or 4-thread twill weave fabrics, containing 65 percent by weight of polyester staple fibres and 35 percent by weight of cotton, having in the warp 425 yarns or more per 10 cm and in the weft 165 yarns or more per 10 cm, of a weight of 260 g/m<sup>2</sup> or more, but not exceeding 290 g/m<sup>2</sup>, for use in the manufacture of men's trousers, be removed for an indeterminate period of time. The Tribunal found no evidence that any domestic fabric producer or converter had produced or offered a fabric comparable in quality to the US-sourced fabrics in the volumes required by the domestic users since Dominion Textile left the business in 1992. Accordingly, the Tribunal determined that the net economic benefit that would result from the requested tariff relief would amount to the value of duties which, but for the tariff relief, would have been collected on imports of the fabrics from the United States. Duties on imports of the fabrics were projected to be \$290,000 in 1997 and zero on January 1, 1998, when duties payable on imports of fabrics from the United States are removed completely.



## TABLE 1

### Disposition of Requests for Tariff Relief Between April 1, 1996, and March 31, 1997

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-94-003	Canastro Textiles Inc.	yarn	September 26, 1996	Withdrawn
TR-95-007 and TR-95-008	Parapad Inc.	fabric	April 1, 1996	Tariff relief not granted
TR-95-009	Peerless Clothing Inc.	fabric	April 12, 1996	a) Indeterminate tariff relief b) Two-year tariff relief
TR-95-010 and TR-95-034	Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	fabric	August 27, 1996	Indeterminate partial tariff relief
TR-95-013	Doubletex	fabric	In Progress	
TR-95-014	Palliser Furniture Ltd.	fabric	May 1, 1996	Two-year tariff relief
TR-95-015 to TR-95-032, TR-95-038 to TR-95-042, TR-95-046, TR-95-048 to TR-95-050 and TR-95-055	Fantastic-T Knitter Inc., B.C. Garment Factory Ltd. and Global Garment Factory Ltd.	fabric	July 11, 1996	Tariff relief not granted
TR-95-035, TR-95-043 and TR-95-044	Beco Industries Ltd.	fabric	July 4, 1996	Tariff relief not granted
TR-95-036	Canadian Mill Supply Co. Ltd.	fabric	May 27, 1996	Indeterminate tariff relief
TR-95-037	Paris Star Knitting Mills Inc.	fabric	July 31, 1996	Indeterminate tariff relief
TR-95-045	Yeadon Fabric Structures Ltd.	fabric	September 24, 1996	Withdrawn
TR-95-047	B.C. Garment Factory Ltd.	thread	August 20, 1996	Tariff relief not granted
TR-95-051	Camp Mate Limited	fabric	June 10, 1996	Indeterminate tariff relief
TR-95-052	National-General Filter Products Ltd.	fabric	March 12, 1997	Terminated - Lack of jurisdiction

## Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	fabric	June 27, 1996	Indeterminate tariff relief
TR-95-054	Handler Textile (Canada) Inc.	fabric	October 23, 1996	Indeterminate tariff relief — United States only
TR-95-056	Sealy Canada Ltd.	fabric	June 28, 1996	Indeterminate tariff relief
TR-95-056A	Sealy Canada Ltd.	fabric	March 17, 1997	Indeterminate tariff relief
TR-95-057 and TR-95-058	Doubletex	fabric	October 24, 1996	Indeterminate tariff relief
TR-95-060	Triple M Fiberglass Mfg. Ltd.	fabric	September 26, 1996	Indeterminate tariff relief
TR-95-061	Camp Mate Limited	fabric	September 3, 1996	Indeterminate tariff relief
TR-95-062	Freed & Freed International Ltd.	fabric	July 17, 1996	Withdrawn
TR-95-063	Buckeye Industries	fabric	December 19, 1996	Indeterminate tariff relief
TR-95-064 and TR-95-065	Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	fabric	February 12, 1997	Indeterminate tariff relief
TR-95-066	Lenrod Industries Ltd.	fabric	February 25, 1997	Tariff relief not granted
TR-96-001	Camoplast Rockland Limited	fabric	April 12, 1996	Terminated - Lack of jurisdiction
TR-96-002	Hang Tung Garment Factory (Canada) Ltd.	yarn	June 19, 1996	Terminated
TR-96-003	Venture III Industries Inc.	fabric	January 31, 1997	Indeterminate tariff relief
TR-96-004	Acton International Inc.	fabric	February 27, 1997	Indeterminate tariff relief
TR-96-005	Peerless Clothing Inc.	fabric	Not yet initiated	

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## Disposition of Requests (cont'd)

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-96-006	Alpine Joe Sportswear Ltd.	fabric	March 27, 1997	Indeterminate tariff relief
TR-96-007	H.D. Brown Enterprises Ltd.	fabric	In Progress	
TR-96-008 to TR-96-013	Les Collections Shan Inc.	fabric	In Progress	
TR-96-014	Peerless Clothing Inc.	fabric	Not yet initiated	
TR-96-015	Main Knitting Inc.	yarn	February 10, 1997	Terminated -Lack of jurisdiction

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## TABLE 2

### Tariff Relief Recommendations in Place

Request No.	Requester	Code	Date	Duration
TR-94-001	Canatex Industries (Division of Richelieu Knitting Inc.)	4077	May 30, 1995	Permanent tariff relief
TR-94-002 and TR-94-002A	Kute-Knit Mfg. Inc.	4117, 4118	July 10, 1996	Three-year tariff relief
TR-94-004	Woods Canada Limited	4232	July 26, 1995	Permanent tariff relief
TR-94-005	Hemisphere Productions Inc.	4242	July 26, 1995	Three-year tariff relief
TR-94-009	Équipement Saguenay (1982) Ltée	4282	July 26, 1995	Three-year tariff relief
TR-94-010	Palliser Furniture Ltd.	4397	April 30, 1996	Permanent tariff relief
TR-94-011 and TR-94-019	Château Stores of Canada Ltd. and Hemisphere Productions Inc.	4263	April 30, 1996	Two-year tariff relief
TR-94-012	Peerless Clothing Inc.	4393	April 30, 1996	Indeterminate tariff relief
TR-94-013 and TR-94-016	MWG Apparel Corp.	4268, 4269	April 30, 1996	Permanent tariff relief
TR-94-017 and TR-94-018	Elite Counter & Supplies	4495, 4496	December 13, 1995	Permanent tariff relief
TR-95-003	Landes Canada Inc.	4288	December 13, 1995	Permanent tariff relief
TR-95-004	Lingerie Bright Sleepwear (1991) Inc.	4250	July 10, 1996	Indeterminate tariff relief
TR-95-005	Lingerie Bright Sleepwear (1991) Inc.	4251	July 10, 1996	Indeterminate tariff relief
TR-95-009	Peerless Clothing Inc.	4271, 4272 4273	August 28, 1996	Indeterminate tariff relief Two-year tariff relief
TR-95-010 and TR-95-034	Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	4410	November 29, 1996	Indeterminate tariff relief

## Recommendations in Place (cont'd)

Request No.	Requester	Code	Date	Duration
TR-95-011	Louben Sportswear Inc.	4218	July 10, 1996	Indeterminate tariff relief
TR-95-012	Perfect Dyeing Canada Inc.	4155	July 10, 1996	Indeterminate tariff relief
TR-95-014	Palliser Furniture Ltd.	4418	March 19, 1997	Two-year tariff relief
TR-95-036	Canadian Mill Supply Co. Ltd.	4401	September 27, 1996	Indeterminate tariff relief
TR-95-037	Paris Star Knitting Mills Inc.	4409	September 27, 1996	Indeterminate tariff relief
TR-95-051	Camp Mate Limited	4407, 4408	September 27, 1996	Indeterminate tariff relief
TR-95-053 and TR-95-059	Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	4276, 4277	September 27, 1996	Indeterminate tariff relief
TR-95-054	Handler Textile (Canada) Inc.	4417	March 19, 1997	Indeterminate tariff relief - United States only
TR-95-056	Sealy Canada Ltd.	4402, 4403, 4404, 4405, 4406	September 27, 1996	Indeterminate tariff relief
TR-95-057 and TR-95-058	Doubletex	4415, 4416	March 19, 1997	Indeterminate tariff relief
TR-95-060	Triple M Fiberglass Mfg. Ltd.	4412	December 19, 1996	Indeterminate tariff relief
TR-95-061	Camp Mate Limited	4411	December 19, 1996	Indeterminate tariff relief
TR-95-063	Buckeye Industries	4413, 4414	March 19, 1997	Indeterminate tariff relief



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# CHAPTER VI

## PROCUREMENT REVIEW

### Introduction

Suppliers may now challenge procurements that they believe have not been carried out in accordance with the requirements of the following: Chapter Ten of NAFTA, Chapter Five of the AIT or the *WTO Agreement on Government Procurement*. The bid challenge portions of these agreements came into force on January 1, 1994, July 1, 1995, and January 1, 1996, respectively.

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

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

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

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

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

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### Summary of Procurement Review Activities

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	1995-96	1996-97
<b>CASES RESOLVED BY OR BETWEEN PARTIES</b>		
Resolved Between Parties	3	0
Withdrawn	3	6
Abandoned While Filing	<u>4</u>	<u>1</u>
<b>Subtotal</b>	10	7
<b>INQUIRIES NOT INITIATED ON PROCEDURAL GROUNDS</b>		
Lack of Jurisdiction	8	7
Late Filing	4	5
No Valid Basis	<u>6</u>	<u>9</u>
<b>Subtotal</b>	18	21
<b>CASES DETERMINED ON MERIT</b>		
Complaint not Valid	3	7
Complaint Valid	<u>3</u>	<u>5</u>
<b>Subtotal</b>	6	12
<b>IN PROGRESS</b>	<u>8</u>	<u>9</u>
<b>TOTAL</b>	42	49



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**Summary of  
Selected  
Decisions**

During fiscal year 1996-97, the Tribunal issued 12 written determinations of its findings and recommendations. In 5 of the 12 written decisions, the complaints were determined to be valid or valid in part. In these cases, various remedies were granted in the form of cost awards or recommendations. In one case, File No. PR-95-023, the Department of Public Works and Government Services (the Department) decided not to implement the Tribunal's recommendations. Nine other cases were in progress at year end. The table at the end of this chapter summarizes these activities, as well as those cases resolved by or between parties.

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

***Array Systems  
Computing Inc.***

*PR-95-023*

The Tribunal made a determination with respect to a complaint filed by Array Systems Computing Inc. (the complainant) concerning a solicitation of the Department. The solicitation was a limited tender for the purchase of six AN/SQS-510 Sonar systems and modifications to two identical Sonar systems for the Iroquois class ships for the Department of National Defence.

The complainant alleged that the Department issued an overly restrictive specification and limited competition to only one supplier, in contravention of the AIT.

Having examined the evidence and arguments presented by the parties and considering the subject matter of the complaint, the Tribunal determined that the complaint was valid; therefore, it recommended, as a remedy, that the Department issue a competitive solicitation for the requirement in accordance with the provisions of the AIT. The Department decided not to implement the Tribunal's recommendations citing that a competitive procurement in this instance would create undue delays to the operational requirements of the Department of National Defence.

***FPG/HRI Joint  
Venture (Fall  
Protection Group Inc.  
and HRI Human  
Resources  
International Inc.)***

*PR-95-031*

The Tribunal made a determination with respect to a complaint filed by FPG/HRI Joint Venture (Fall Protection Group Inc. and HRI Human Resources International Inc.) (the complainant) concerning a solicitation of the Department for the supply of instruction and supervision services in various areas of technical expertise for the cadet leadership and challenge course at the Banff National Army Cadet Training Centre of the Department of National Defence.

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**ISM Information  
Systems Management  
Corporation**

*PR-95-040*

The complainant alleged that the procurement process was flawed because improper and unfair communications took place between members of the evaluation committee and the contract awardee during the bidding process. The complainant also alleged that its bid was improperly evaluated and that the proposal by the contract awardee should have been declared non-compliant.

After careful consideration of the requirements of NAFTA and the AIT, the Tribunal determined that the complaint was valid in part. The Tribunal recommended, as a remedy, that the Department not exercise the option to extend the contract for an additional two years and, instead, should the requirement continue to exist, re-issue a competitive solicitation for the requirement in accordance with the provisions of the applicable agreements. The Department agreed to implement the Tribunal's recommendation.

The Tribunal made a determination with respect to a complaint filed by ISM Information Systems Management Corporation (the complainant) concerning a solicitation of the Department for the supply of technical services to support local area network and approximately 8,000 workstations located in the National Capital Region and elsewhere in Canada.

The complainant alleged that the Department, by requiring suppliers to commit to full indemnification of the Crown for third party claims relating to consequential damages, breached certain requirements of NAFTA.

Having examined the evidence and arguments presented by the parties and considering the obligations specified in NAFTA, the Tribunal determined that the complaint was not valid.

**Conair Aviation,  
A division of Conair  
Aviation Ltd.**

*PR-95-039*

The Tribunal made a determination with respect to a complaint filed by Conair Aviation, A division of Conair Aviation Ltd. (the complainant) concerning a solicitation of the Department. The solicitation was for the supply of air tanker services, including pilot services, for fire bombing activities for the Department of Indian Affairs and Northern Development, to be based at Whitehorse, Yukon Territory, and operating from different points in the Yukon Territory, the Northwest Territories, adjacent provinces and Alaska.

The complainant alleged that the Department withdrew the award of the contract to the complainant and reissued the Request for Proposal in a manner contrary to the requirements of NAFTA.

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

The Tribunal recommended, as a remedy, that the Department pay the complainant compensation recognizing that the complainant should have been awarded the contract and would have had the opportunity to profit therefrom.

The Tribunal also recommended that the Department not exercise the option to extend the contract for an additional year and, instead should the requirement continue to exist, reissue a competitive solicitation for the requirement in accordance with the provisions of the applicable agreements.

The Tribunal awarded the complainant its reasonable costs incurred in relation to filing and proceeding with its complaint.

The Department agreed to implement the Tribunal's recommendations and the complainant was given complaint costs of \$25,796.73 and compensation of \$290,203.65.

***Corel Corporation***

*PR-96-011*

The Tribunal made a determination with respect to a complaint filed by Corel Corporation (the complainant) concerning a solicitation of the Department for the supply of a department-wide, unlimited user licence for an Office Automation Suite, including installation and integration support and training services for approximately 40,000 users in the Department of National Defence.

The complainant alleged that the manner in which this procurement was carried out violated Articles 1008(1)(a) and (b) of NAFTA. The complainant submitted that this procurement was fundamentally flawed and failed to conform to the rules of fair and equal treatment of the participants.

Having examined the evidence and arguments presented by the parties and considering the obligations specified in NAFTA, the Tribunal determined that the complaint was not valid.

The Tribunal's decision has been appealed to the Federal Court of Canada by the complainant.

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**Bell Canada**

*PR-96-023*

The Tribunal made a determination with respect to a complaint filed by Bell Canada (the complainant) concerning a solicitation of the Department for the purchase of a Military Message Handling System Proof of Concept for the Department of National Defence.

It was alleged that the Department, by improperly determining the complainant's proposal non-compliant to the requirements of the Request for Proposal, violated certain provisions of the AIT and NAFTA.

Having examined the evidence and arguments presented by the parties, the Tribunal determined, in consideration of the subject matter of the complaint, that the procurement was conducted in accordance with the AIT and, therefore, that the complaint was not valid.

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## Disposition of Procurement Complaints Between April 1, 1996, and March 31, 1997

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File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-95-023	Array Systems Computing Inc.	January 5, 1996	Decision issued April 16, 1996 Complaint valid
PR-95-031	FPG/HRI Joint Venture	February 26, 1996	Decision issued June 6, 1996 Complaint valid in part
PR-95-033	Emcon Emanation Control Limited	March 5, 1996	Decision issued June 3, 1996 Complaint not valid
PR-95-035	Secure Technologies International Inc.	March 15, 1996	Decision issued June 13, 1996 Complaint valid in part
PR-95-037	Taftek	March 22, 1996	Complaint withdrawn
PR-95-038	Équipement Industriel Champion Inc.	March 25, 1996	Decision issued June 25, 1996 Complaint not valid
PR-95-039	Conair Aviation, A division of Conair Aviation Ltd.	March 25, 1996	Decision issued August 8, 1996 Complaint valid
PR-95-040	ISM Information Systems Management Corporation	March 27, 1996	Decision issued July 30, 1996 Complaint not valid
PR-96-001	Atlantis Aerospace Corporation	April 3, 1996	Not accepted for inquiry/No valid basis
PR-96-002	A.I. Inc.	April 4, 1996	Not accepted for inquiry/No valid basis
PR-96-003	Andaurex Industries Inc.	April 25, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-004	Équipement Industriel Champion Inc.	May 23, 1996	Not accepted for inquiry/No valid basis
PR-96-005	International Code Services	May 24, 1996	Complaint withdrawn
PR-96-006	Array Systems Computing Inc.	May 24, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-007	Lease 1 Financial Services Inc.	May 29, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-008	MacDonald Dettwiler's	June 11, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-009	Addis Enterprises	June 20, 1996	Decision issued September 18, 1996 Complaint not valid
PR-96-010	Spacesaver Mobile Storage Systems Corporation	June 24, 1996	Not accepted for inquiry/Lack of jurisdiction

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## Disposition of Procurement Complaints (cont'd)

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File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-96-011	Corel Corporation	July 3, 1996	Decision issued November 21, 1996 Complaint not valid Tribunal's decision appealed to Federal Court of Canada
PR-96-012	Armstrong Laing Group	July 5, 1996	Not accepted for inquiry/Lack of jurisdiction
PR-96-013	General Waste	July 12, 1996	Complaint withdrawn
PR-96-014	United Van Lines Canada (Ltd.)	August 1, 1996	Not accepted for inquiry/No valid basis
PR-96-015	Le Groupe BGM	August 1, 1996	Not accepted for inquiry/No valid basis
PR-96-016	Hitachi Data Systems	August 15, 1996	Not accepted for inquiry/No valid basis
PR-96-017	Shaddy International Marketing Ltd.	August 16, 1996	Not accepted for inquiry/No valid basis
PR-96-018	Tru-Temp Electric Heat Ltd.	August 16, 1996	Not accepted for inquiry/Late filing
PR-96-019	Knoll North America Inc.	September 24, 1996	Complaint withdrawn
PR-96-020	E.D.S. of Canada Ltd.	October 4, 1996	Decision issued January 10, 1997 Complaint not valid
PR-96-021	London Photocopy Inc.	October 10, 1996	Decision issued February 7, 1997 Complaint valid in part
PR-96-022	Threshold Technologies Company	November 18, 1996	Complaint withdrawn
PR-96-023	Bell Canada	November 27, 1996	Decision issued February 21, 1997 Complaint not valid
PR-96-024	AirSpray (1976) Ltd.	November 27, 1996	Not accepted for inquiry/Late filing
PR-96-025	Digital Equipment of Canada Ltd.	December 12, 1996	Complaint withdrawn
PR-96-026	A V Spex Audio Visual & Video Systems	December 18, 1996	Not accepted for inquiry/Late filing
PR-96-027	Philip Environmental	January 7, 1997	Accepted for inquiry
PR-96-028	M.C. Coach Informatiques International Inc.	January 24, 1997	Not accepted for inquiry/Late filing
PR-96-029	Pro-Safe Fire Training Systems	February 5, 1997	Abandoned while filing
PR-96-030	Symtron Systems Inc.	February 24, 1997	Accepted for inquiry

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## Disposition of Procurement Complaints (cont'd)

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File No.	Complainant	Date of Receipt of Complaint	Status/Decision
PR-96-031	ATS Aerospace Inc.	February 24, 1997	Not accepted for inquiry/Lack of jurisdiction
PR-96-032	Académie de Gérontologie de l'Outaouais Inc.	February 26, 1997	Not accepted for inquiry/No valid basis
PR-96-033	Versatech Products Inc.	February 27, 1997	Accepted for inquiry
PR-96-034	Atlantic Safety Centre	March 4, 1997	Accepted for inquiry
PR-96-035	Accutel Conferencing Systems Inc.	March 7, 1997	Accepted for inquiry
PR-96-036	Mirtech International Security Inc.	March 11, 1997	Accepted for inquiry
PR-96-037	Sybase Canada Limited	March 11, 1997	Accepted for inquiry
PR-96-038	Soquelec Ltd.	March 14, 1997	Not accepted for inquiry/No valid basis
PR-96-039	Datafile, a TAB Products Company	March 17, 1997	Not accepted for inquiry/Late filing
PR-96-040	Hervé Pomerleau inc.	March 18, 1997	Accepted for inquiry
PR-96-041	On Power Systems Inc.	March 19, 1997	Being filed





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# CHAPTER VII

## USE OF ANTI-DUMPING AND COUNTERVAILING MEASURES

Each year since 1990, the Tribunal's research staff has produced working papers on anti-dumping measures. This year's paper, *Canadian and International Use of Anti-Dumping and Countervailing Measures: 1988-1995*, provides updated estimates of imports affected by such measures through 1995. It also includes estimates of the value of Canadian domestic shipments affected by Canadian measures. Aggregate data are presented on a yearly basis. Detailed compilations by product and country affected are presented as annual averages for two sub-periods: 1988-91 and 1992-95. The staff paper also provides updated information on anti-dumping and countervailing measures by WTO members since 1990. This chapter summarizes the highlights of the staff paper.

### Canada's Use of Anti-Dumping and Countervailing Measures

At the end of 1995, there were 41 injury findings in place in Canada, covering 97 actions. They affected imports from 33 countries. In 1995, the Tribunal made 2 injury findings, covering 6 actions affecting imports from 5 countries and rescinded 5 actions against imports from 5 countries.

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### Canadian Anti-Dumping and Countervailing Measures, 1988-95

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Year <sup>2</sup>	Actions <sup>1</sup>			Findings <sup>1</sup>
	Added	Expired/ Rescinded	In Place (Dec. 31)	In Place (Dec. 31)
1988	3	22	140	64
1989	2	14	128	59
1990	10	60	78	38
1991	12	17	73	35
1992	4	7	70	33
1993	16	0	86	38
1994	19	9	96	39
1995	6	5	97	41

1. Actions are measured on a country-specific basis. Findings can include several actions on the same product. For example, the Tribunal finding in Inquiry No. NQ-90-005, *Carbon Steel Welded Pipe*, includes six actions: one each for Argentina, India, Romania, Taiwan, Thailand and Venezuela. Combined anti-dumping and countervailing measures against imports from a country are counted as a single action.

2. Counting convention: the first year of a measure is the year of the preliminary determination; the last is the year prior to the year in which the measure was rescinded or expired.

Source: Tribunal Research Branch Data Base.

## Import Values

In 1995, the Tribunal's staff estimated the value of imports affected by anti-dumping and countervailing measures to be \$1 billion, two and a half times the level of 1990. They accounted for 0.51 percent of total Canadian imports in 1995, down from 0.54 percent in 1994.

### Canadian Imports Affected by Anti-Dumping and Countervailing Measures, 1988-95 (\$000)

Year	Total Imports (1)	Value of Imports Affected			Total (5)	As a Percentage of Total Imports (6)
		Added by New Inquiries (2)	Rescinded and Expired (3)	Change in Imports: Findings in Place (4)		
1988	93,147,427	21,267	436,633	(202,830)	744,111	0.80
1989	120,771,230	468	12,691	406,110	1,137,998	0.94
1990	120,821,268	85,504	806,257	(4,875)	412,370	0.34
1991	120,362,894	328,285	56,035	(27,429)	657,191	0.55
1992	132,128,011	104,001	70,512	(69,096)	621,584	0.47
1993	152,102,323	149,489	0	(13,712)	757,361	0.50
1994	181,789,114	179,671	59,589	97,387	974,830	0.54
1995	200,819,808	75,875	41,572	13,959	1,023,092	0.51

Notes:

1. Column 5 end of period equals column 5 for the previous year plus column 2, minus column 3 plus column 4.
2. Column 6 equals column 5 as a percentage of column 1.

Source: Tribunal Research Branch Data Base and Statistics Canada.

There were significant changes in the product pattern of imports affected by anti-dumping and countervailing measures between the periods 1988-91 and 1992-95. In the 1992-95 period, three product groups, textiles (mainly carpeting), primary metal and other manufacturing, accounted for over 72 percent of imports affected. In the 1988-91 period, four product groups, primary metal, machinery, electrical and agricultural, accounted for close to 70 percent of imports affected.

A similar inter-period analysis shows significant changes in the origin of imports affected by anti-dumping and countervailing measures. The most significant change involved imports from the United States. In the 1992-95 period, they accounted for 59 percent of all imports affected, up from 30 percent in the 1988-91 period. Other changes concerned imports from the European Union, Japan and Pacific Rim countries. The shares of the European Union and Japan were 10.4 and 0.7 percent respectively in the 1992-95 period, down from 21.4 and 19.0 percent in the 1988-91 period. In contrast, the share of Pacific Rim countries' imports increased from 17.0 to 22.3 percent between the two periods.

**Domestic Shipment Values**

Imports affected as a share of total imports into Canada from various regions have not been high. In the 1992-95 period, the share was highest from Pacific Rim countries: 1.4 percent of imports, the same as in the 1988-91 period. In contrast, the share of imports affected from Japan declined from 1.5 to less than 0.1 percent between the two periods. The corresponding shares for the United States were 0.3 and 0.4 percent.

The value of domestic shipments affected by anti-dumping and countervailing measures is estimated at \$4.3 billion in 1995, compared with \$3.5 billion in 1994. Shipments affected accounted for 2.1 percent of total domestic shipments by all goods producing industries in 1995, up from 1.8 percent in 1994.

**Canadian Domestic Shipments Affected by Anti-Dumping and Countervailing Measures, 1988-95**  
**(\$000)**

Year	Value of Domestic Shipments Affected					As a Percentage of Total Domestic Shipments (6)
	Total Domestic Shipments (1)	Added by New Inquiries (2)	Rescinded and Expired (3)	Change in Domestic Shipments: Findings in Place (4)	Total (5)	
1988	203,276,644	34,538	206,306	172,191	2,661,967	1.31
1989	215,513,885	3,174	62,383	207,986	2,810,744	1.30
1990	200,129,733	126,900	1,051,010	(96,604)	1,790,030	0.89
1991	184,285,721	688,514	168,567	(52,328)	2,257,649	1.23
1992	177,633,693	340,143	753,245	(126,049)	1,718,498	0.97
1993	180,268,911	777,560	0	31,377	2,527,435	1.40
1994	192,990,714	903,100	263,480	328,284	3,495,339	1.81
1995	201,928,226	753,416	0	72,318	4,321,073	2.14

Notes:

1. Column 5 end of period equals column 5 for the previous year plus column 2, minus column 3 plus column 4.
2. Column 6 equals column 5 as a percentage of column 1.

Source: Tribunal Research Branch Data Base and Statistics Canada.

The primary metal, food and textile industries were the main beneficiaries of anti-dumping and countervailing measures during the 1992-95 period. They accounted for over 77 percent of total domestic shipments affected. In the 1988-91 period, the main beneficiaries were agricultural, primary metal and food industries, accounting for over 75 percent of total domestic shipments affected.

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**Measures in Force by WTO Members**

Reports to the WTO on anti-dumping and countervailing measures generally do not contain sufficient data to estimate the value of imports affected or to compare that value with a country's total imports. Accordingly, the staff analysis is based on the number of measures in place. Such an analysis cannot provide the same assessment of their economic impact as that provided above for Canadian measures.

**Anti-Dumping Measures**

Between 1990 and 1995, many WTO members increased their use of anti-dumping measures; the number in force increased from 458 to 903. The increase was greatest for the United States, Mexico, Australia and "Other" countries. Included among these countries are Turkey, India, the Republic of Korea and Argentina. There was slower growth in the number of Canadian measures. In 1995, Canada accounted for 10.4 percent of anti-dumping measures in place.

In 1995, about 56 percent of anti-dumping measures by WTO members affected three product groups: primary metal (26.6 percent), chemicals (20.7 percent) and electrical goods (9.1 percent). Except for primary metal, Canadian measures have tended to have a greater effect on imports of other products.

In 1995, most anti-dumping measures were directed at imports from the People's Republic of China, the European Union, Japan, the United States, the Republic of Korea, Brazil and Taiwan. Much of the large growth in the number of measures between 1990 and 1995 affected exports by China, "Other" countries and the European Union. Canadian exports were affected by 1.8 percent of all anti-dumping measures.

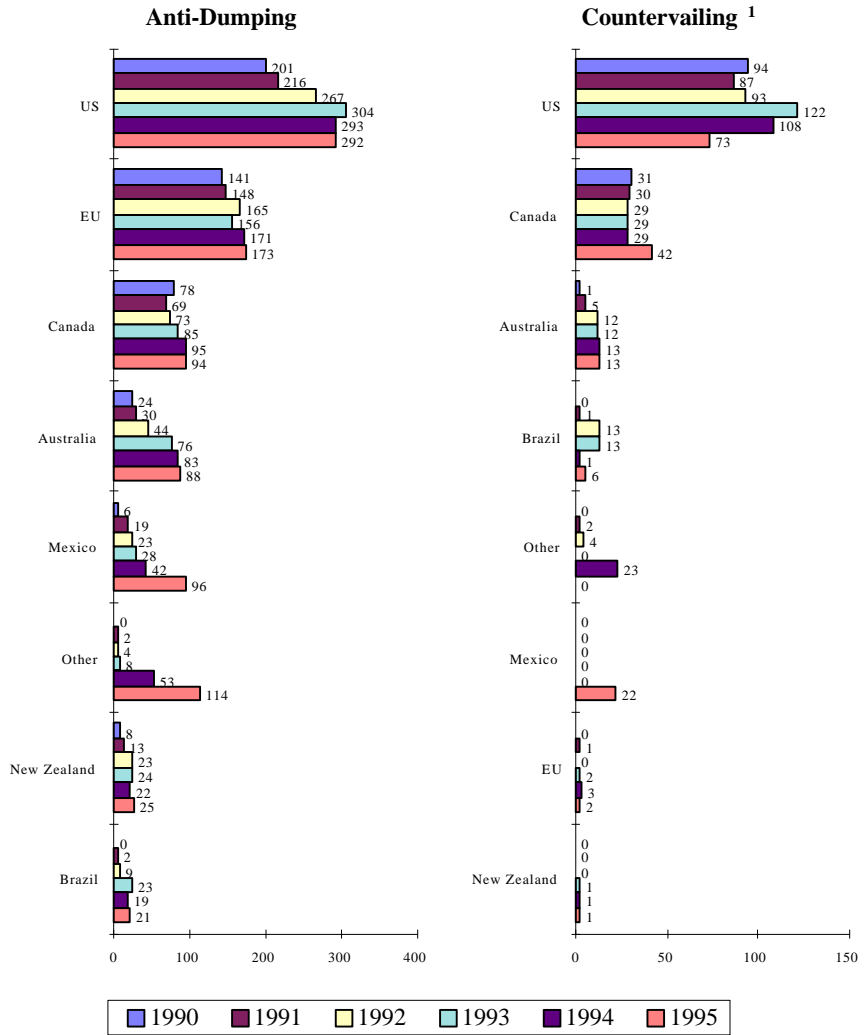
**Countervailing Measures**

The number of countervailing measures in force declined from a peak of 179 in 1993 to 159 in 1995. The removal of a large number of measures by the United States was not fully offset by new measures by other countries. Although the number of Canadian countervailing measures was small compared to its use of anti-dumping measures, Canada ranked second among WTO members.

In 1995, food product exports were the most affected, accounting for 52 percent of total countervailing measures. Primary metal exports were affected by 27 percent of measures. All Canadian countervailing measures were directed at food imports from the European Union.

Exports from the European Union were the most affected by countervailing measures, accounting for close to 60 percent of the measures in place in 1995. Most of the remainder affected exports by "Other" countries and Brazil. There were four measures directed at Canadian exports, all by the United States.

## Number of Measures in Force by WTO Members, 1990-95



1. Each countervailing measure directed at the European Union is counted as an action against imports of each of the member states if the report to the WTO does not specify a particular member state or states. In its analysis of Canadian measures, however, the Tribunal's staff included a member state in the number of actions only if it had exported the products in question to Canada.

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



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# PUBLICATIONS

**June 1996**

Annual Report for the Fiscal Year Ending March 31, 1996

**October 1996**

*Textile Reference Guide*

**November 1996**

*Textile Reference: Annual Status Report*

**Bulletin**

Vol. 8, Nos. 1 - 4

**New Brochure  
and Information  
Documents**

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

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

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