

# **ANNUAL REPORT**

**FOR THE FISCAL YEAR ENDING  
MARCH 31, 2016**

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June 21, 2016

The Honourable William Francis Morneau, P.C., M.P.  
Minister of Finance  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Tribunal's Annual Report for the fiscal year ending March 31, 2016.

Yours sincerely,

Jean Bédard  
Acting Chairperson



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## CHAPTER I

### HIGHLIGHTS

The Canadian International Trade Tribunal (the Tribunal) is recognized domestically and globally as a centre of excellence in the fair and timely adjudication of trade law matters. The Tribunal is a quasi-judicial body which provides Canadian and international businesses with access to fair, transparent and timely trade remedy and federal government procurement inquiries, and customs and excise tax appeals. At the request of the Government, the Tribunal provides advice in tariff, trade, commercial and economic matters.

The Tribunal began operations on December 31, 1988, as the result of a merger of the Tariff Board, the Canadian Import Tribunal and the Textile and Clothing Board. However, its history goes back to the time of Confederation and the Board of Customs, whose appellate mandate was transferred to the Tariff Board in the 1950s.

The Canadian Import Tribunal was originally established in 1969 as the Anti-dumping Tribunal. Its name change reflected a broader mandate to conduct injury inquiries in both anti-dumping and countervailing duty proceedings under the *Special Import Measures Act (SIMA)*, as well as in safeguard cases. The Tribunal's third predecessor, the Textile and Clothing Board, was formed in the early 1970s and inquired into safeguard complaints by the Canadian textile and apparel industries. Lastly, on January 1, 1994, the Tribunal absorbed the Procurement Review Board, extending the Tribunal's mandate to include inquiries into whether federal procurement processes have been carried out in accordance with Canada's domestic and international trade obligations.

As of November 1, 2014, the Tribunal's Chairperson and members rely upon the Administrative Tribunals Support Service of Canada (ATSSC) for corporate, registry, research and legal services.

### Trade Remedies

The Tribunal plays a significant role within Canada's trade remedy system. Under *SIMA*, the Tribunal determines whether the dumping and subsidizing of imported goods cause injury or threaten to cause injury to a domestic industry. As of December 31, 2015, there were 27 *SIMA* findings and orders in force. The Tribunal issued all its decisions within the tight deadlines set out in *SIMA*.

## **Procurement Review**

During fiscal year 2015-2016, the Tribunal received 70 procurement complaints and issued 70 decisions on whether to accept complaints for inquiry. The Tribunal also issued 25 final decisions on merit where complaints were accepted for inquiry. Combined, this represented a total of 95 decisions. The 70 complaints received in this fiscal year pertained to 58 different contracts with a collective value of \$2.55 billion. All procurement review decisions were issued within legislated deadlines.

## **Appeals**

A total of 40 appeals were filed during the reporting period. The Tribunal issued 26 decisions under the *Customs Act* and 2 under *SIMA*. All but one appeal was decided within 120 days of being heard by the Tribunal. The average appeal was decided within 81 days.

## **Caseload**

The first table below contains statistics pertaining to the Tribunal's caseload for 2015-2016. The second table contains statistics relating to other case-related activities in 2015-2016. These statistics illustrate the complexity and diversity of the cases considered by the Tribunal.



## Tribunal Caseload Overview—2015-2016

	Cases Brought Forward From Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions to Initiate	Decisions Not to Initiate	Total Decisions/ Reports Issued	Cases Withdrawn/ Closed	Cases Outstanding (March 31, 2015)
<b>Trade remedies</b>								
Preliminary injury inquiries	-	3	3	N/A	N/A	2	-	1
Inquiries	2	2	4	N/A	N/A	4	-	-
Requests for public interest inquiries	1	-	1	-	-	1	-	-
Public interest inquiries	-	1	1	1	-	1	-	-
Requests for interim reviews	-	-	-	-	-	-	-	-
Interim reviews	1	-	1	N/A	N/A	-	-	1
Expiries <sup>1</sup>	-	3	3	3	-	3	-	-
Expiry reviews	3	3	6	N/A	N/A	3	-	3
Remanded cases	-	-	-	N/A	N/A	-	-	-
<b>TOTAL</b>	<b>7</b>	<b>12</b>	<b>19</b>	<b>4</b>		<b>14</b>	<b>-</b>	<b>5</b>
<b>Procurement</b>								
Complaints received	3	70	73	24	46	70	2	1
Complaints accepted for inquiry	10	N/A	10	N/A	N/A	25	2	7
Remanded cases <sup>2</sup>	-	-	-	N/A	N/A	-	N/A	-
<b>TOTAL</b>	<b>13</b>	<b>70</b>	<b>83</b>	<b>24</b>	<b>46</b>	<b>95</b>	<b>4</b>	<b>8</b>
<b>Appeals</b>								
Extensions of time								
<i>Customs Act</i>	-	2	2	N/A	N/A	2	-	-
<i>Excise Tax Act</i>	-	-	-	N/A	N/A	-	-	-
<b>TOTAL</b>	<b>-</b>	<b>2</b>	<b>2</b>	<b>N/A</b>	<b>N/A</b>	<b>2</b>	<b>-</b>	<b>-</b>
Appeals								
<i>Customs Act</i>	44	37	81	N/A	N/A	26	20	35
<i>Excise Tax Act</i>	2	-	2	N/A	N/A	-	2	-
<i>Special Import Measures Act</i>	3	3	6	N/A	N/A	2	3	1
Remanded cases	2	2	4	N/A	N/A	-	-	4
<b>TOTAL</b>	<b>51</b>	<b>42</b>	<b>93</b>	<b>N/A</b>	<b>N/A</b>	<b>28</b>	<b>25</b>	<b>40</b>
<b>Standing textile reference</b>								
Requests to initiate investigations	-	-	-	-	-	-	-	-
Investigations	-	-	-	N/A	N/A	-	-	-
<p>1. With respect to expiries, “decisions to initiate” refer to decisions to initiate expiry reviews.</p> <p>2. Where a single remand decision is issued in respect of multiple cases, it is accounted for as a single remanded case.</p> <p>N/A = Not applicable</p>								

## Statistics Relating to Case Activities in 2015-2016

	Trade Remedy Activities	Procurement Review Activities	Appeals	Standing Textile Reference	TOTAL
<b>Orders</b>					
Disclosure orders	6	-	-	-	6
Cost award orders	N/A	9	N/A	N/A	9
Compensation orders	N/A	0	N/A	N/A	0
Production orders	5	2	0	-	7
Postponement of award orders	N/A	4	N/A	N/A	4
Rescission of postponement of award orders	N/A	3	N/A	N/A	3
<b>Directions/administrative rulings</b>					
Requests for information	318	-	-	-	318
Motions	1	11	5	-	17
Subpoenas	9	-	-	-	9
<b>Other statistics</b>					
Public hearing days	31	-	21	-	52
File hearings <sup>1</sup>	5	72	9	-	86
Witnesses	107	-	39	-	146
Participants	146	109	101	-	356
Questionnaire replies	386	-	-	-	386
Pages of official records <sup>2</sup>	126,981	51,759	27,074	-	205,814
<p>1. A file hearing occurs where the Tribunal renders a decision on the basis of written submissions, without holding a public hearing.                  2. Estimated.                  N/A = Not applicable</p>					



## CHAPTER II

# MANDATE, ORGANIZATION AND ACTIVITIES

### Introduction

The Tribunal is a quasi-judicial body that carries out its statutory responsibilities in an independent and impartial manner. It reports to Parliament through the Minister of Finance. The Tribunal's strategic outcome is the fair, timely and transparent disposition of all international trade cases, procurement cases, customs and excise tax appeals and government-mandated inquiries within the Tribunal's jurisdiction.

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

### Mandate

Pursuant to section 16 of the *CITT Act*, the Tribunal's functions are to:

- inquire into whether dumped or subsidized imports have caused or are threatening to cause material injury to a domestic industry or have caused the material retardation of the establishment of a domestic industry, and to hear appeals of related enforcement decisions of the Canada Border Services Agency (CBSA);
- hear appeals from decisions of the CBSA made under the *Customs Act* and of the Minister of National Revenue under the *Excise Tax Act*;
- inquire into complaints by potential suppliers concerning procurement by the federal government that is covered by the *North American Free Trade Agreement (NAFTA)*, the *Agreement on Internal Trade (AIT)*, the *World Trade Organization (WTO) Agreement on Government Procurement (AGP)*, the *Canada-Chile Free Trade Agreement (CCFTA)*, the *Canada-Peru Free Trade Agreement (CPFTA)*, the *Canada-Colombia Free Trade Agreement*

(CCOFTA), the *Canada-Panama Free Trade Agreement (CPAFTA)*, the *Canada-Honduras Free Trade Agreement (CHFTA)* and the *Canada-Korea Free Trade Agreement (CKFTA)*;

- inquire into safeguard complaints by domestic producers; and
- provide advice to the Government of Canada on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

## Governing Legislation

Section	Authority
<i>CITT Act</i>	
18	Inquiries on economic, trade or commercial interests of Canada by reference from the Governor in Council
19	Inquiries into tariff-related matters by reference from the Minister of Finance
19.01	Safeguard inquiries concerning goods imported from the United States or Mexico by reference from the Governor in Council
19.011	Safeguard inquiries concerning goods imported from Israel by reference from the Governor in Council
19.012	Safeguard inquiries concerning goods imported from Chile by reference from the Governor in Council
19.0121	Safeguard inquiries concerning goods imported from Colombia by reference from the Governor in Council
19.013	Safeguard inquiries concerning goods imported from Costa Rica by reference from the Governor in Council
19.0131 and 20.031	Safeguard inquiries concerning goods imported from Panama by reference from the Governor in Council
19.014	Safeguard inquiries concerning goods imported from Iceland by reference from the Governor in Council
19.015	Safeguard inquiries concerning goods imported from Norway by reference from the Governor in Council
19.016	Safeguard inquiries concerning goods imported from Switzerland or Liechtenstein by reference from the Governor in Council
19.017	Safeguard inquiries concerning goods imported from Peru by reference from the Governor in Council
19.018	Safeguard inquiries concerning goods imported from Jordan by reference from the Governor in Council
19.019	Safeguard inquiries concerning goods imported from Honduras by reference from the Governor in Council
19.0191	Safeguard inquiries concerning goods imported from Korea by reference from the Governor in Council
19.02	Mid-term reviews with regard to global safeguard and anti-surge measures
20	Global safeguard inquiries by reference from the Governor in Council
23(1) and 26(1)	Global safeguard complaints by domestic producers
23(1.01), 23(1.03) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from the United States
23(1.02), 23(1.03) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Mexico
23(1.04) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Israel
23(1.05), 23(1.06) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Chile
23(1.081), 26(1)(a)(i.81) and 27(1)(a.81)	Safeguard complaints by domestic producers concerning goods imported from Panama
23(1.061) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Colombia
23(1.07), 23(1.08) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Costa Rica
23(1.09) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Iceland
23(1.091) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Norway
23(1.092) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Switzerland or Liechtenstein
23(1.093) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Peru
23(1.094) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Jordan
23(1.095) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Honduras
23(1.096) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Honduras – textile and apparel goods
23(1.097) and 26(1)	Safeguard complaints by domestic producers concerning goods imported from Korea
30	Further safeguard inquiries by reference from the Governor in Council
30.01	Surge complaints regarding goods from NAFTA countries
30.011	Surge complaints regarding goods from Israel
30.012	Surge complaints regarding goods from Chile

Section	Authority
30.07 and 30.08	Extension inquiries with regard to global safeguard and anti-surge measures
30.11(1)	Complaints by potential suppliers concerning the government procurement process for a designated contract
30.13	Inquiries into complaints by potential suppliers concerning the government procurement process for a designated contract
30.21	Inquiries into market disruption and trade diversion regarding goods from China by reference from the Governor in Council
30.22	Complaints of market disruption in respect of goods originating in China
30.23	Complaints of trade diversion in respect of goods originating in China
30.24	Further inquiries into market disruption or trade diversion by reference from the Governor in Council
30.25(7)	Expiry reviews of measures relating to market disruption or trade diversion in respect of goods originating in China
30.27–30.32	Provisional safeguard inquiries on goods imported from Korea when critical circumstances exist
<b>SIMA</b>	
33(2) and 37	Advisory opinions on injury by reference from the CBSA or further to requests by affected parties
34(2)	Preliminary inquiries with respect to injury or threat of injury caused by the dumping and subsidizing of goods
37.1	Preliminary determinations of injury or threat of injury
42	Inquiries with respect to injury or threat of injury caused by the dumping and subsidizing of goods
43	Orders or findings of the Tribunal concerning injury or threat of injury
44	Recommencement of inquiries (on remand from the Federal Court of Appeal or a binational panel)
45	Public interest inquiries
46	Advice to the CBSA regarding evidence that arises during an inquiry of injurious dumping or subsidizing of non-subject goods
61	Appeals of re-determinations of the CBSA concerning normal values, export prices or amounts of subsidies or whether imported goods are goods of the same description as goods to which a Tribunal finding applies
76.01	Interim reviews of Tribunal orders and findings on its own initiative or by request
76.02	Reviews resulting from the CBSA's reconsideration of final determinations of dumping or subsidizing
76.03	Expiry reviews
76.1	Reviews at the request of the Minister of Finance as a result of rulings of the WTO Dispute Settlement Body
89 and 90	Rulings on who is the importer for purposes of payment of anti-dumping or countervailing duties by request of the CBSA
91	Reconsideration of rulings on who is the importer on the Tribunal's own initiative or by request
<b>Customs Act</b>	
60.2	Applications for extensions of time to request a re-determination or a further re-determination of origin, tariff classification, value for duty or marking of imported goods by the CBSA
67	Appeals of decisions of the CBSA concerning value for duty, origin and tariff classification or making of imported goods
67.1	Applications for orders extending the time to file notices of appeal under section 67
70	References from the CBSA for advisory opinions relating to the origin, tariff classification or value for duty of goods
<b>Excise Tax Act</b>	
81.19, 81.21, 81.22, 81.23, 81.27 and 81.33	Appeals of assessments and determinations of excise tax (on automobiles, air conditioners designed for use in automobiles, gasoline, aviation gasoline, diesel fuel and aviation fuel) made by the CRA
81.32	Applications for extensions of time for internal CRA objection procedure or for appeal to Tribunal
<b>Energy Administration Act</b>	
13	Declarations concerning liability for and the amount of any oil export charge that is payable where oil is transported by pipeline or other means to a point of delivery outside Canada

## Method of Operation

The Chairperson may assign either one or three members of the Tribunal to dispose of cases. Members so assigned have and may exercise all the Tribunal's powers and may perform all the Tribunal's duties and functions in relation to the cases.

The Tribunal proceeds through file hearings (hearings based on written submissions alone) or public hearings. Public hearings are normally held in Ottawa, Ontario, but may also be held elsewhere in Canada depending on the circumstances of the particular case. The Tribunal heard two cases in Vancouver,

British Columbia, in July 2015. In accordance with section 35 of the *CITT Act*, hearings are carried out as “informally and expeditiously” as the circumstances and considerations of fairness permit.

Pursuant to section 17 of the *CITT Act*, the Tribunal is a court of record, and it has all the powers, rights and privileges as are vested in a superior court with regard to procedural matters necessary or proper for the due exercise of its jurisdiction. The Tribunal follows rules and procedures similar to those of a court of justice; for instance, the Tribunal can subpoena witnesses and require parties to produce information. However, in order to facilitate greater access, the rules and procedures are not as formal or strict.

The *CITT Act* contains provisions for the protection of confidential information. Only independent counsel who have filed declarations and confidentiality undertakings may have access to confidential information. Protecting commercially sensitive information against unauthorized disclosure has been, and continues to be, of paramount importance to the Tribunal.

The Tribunal’s Web site provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as the *Canadian International Trade Tribunal Regulations*, the *Rules*, directives, guidelines, practice notices, Tribunal procedures, communiqués and other information relating to its current activities. The Tribunal offers a notification service that informs subscribers of each new posting on its Web site. Subscribers can tailor their subscription to their specific category of interest.

## **Members of the Tribunal**

The Tribunal may be composed of up to seven full-time permanent members, including the Chairperson. The Chairperson assigns cases to members and manages the Tribunal’s work. Permanent members are appointed by the Governor in Council for a term of up to five years, which can be renewed once. Temporary members may also be appointed. Members have a variety of educational backgrounds and experience.

Throughout the year, the Chairperson of the Tribunal was Mr. Stephen A. Leach. The other members of the Tribunal are Mr. Jason W. Downey, Ms. Ann Penner, Mr. Daniel Petit, Mr. Jean Bédard, Mr. Peter Burn and Ms. Rose Ritcey. Mr. Serge Fréchette, a former permanent member, was reappointed to a temporary member position.

## **Support Services to the Tribunal**

The Tribunal receives case-related support services from staff of the CITT Secretariat of the ATSSC. The ATSSC also provides the Tribunal with corporate services and facilities.

## **Outreach**

The Tribunal replaced its Bench and Bar Committee with a broad-based Advisory Committee. The Advisory Committee is made up of a cross-section of legal counsel, business associations and governmental officials. Its purpose is to provide recommendations to enhance the accessibility, fairness and transparency of the Tribunal’s rules and procedures. It held its inaugural meeting in Ottawa, Ontario, on October 1, 2015, and provided its first written report to the Tribunal on March 31, 2016. The Tribunal welcomes the recommendations contained in that report and will continue working with the Advisory Committee to reduce costs and enhance fairness and accessibility for all parties, especially for small- and medium-sized businesses.

Members of the Tribunal also met with peers from around the world, including from Australia, the Republic of Korea, the United Kingdom and the United States, as well as with representatives from the WTO.

## **Judicial Review and Appeal to the Federal Court of Appeal and the Federal Court**

Any person affected by Tribunal findings or orders under section 43, 44, 76.01, 76.02 or 76.03 of *SIMA* can apply for judicial review by the Federal Court of Appeal on grounds of, for instance, denial of natural justice or error of law. Any person affected by Tribunal procurement findings and recommendations under the *CITT Act* can similarly request judicial review by the Federal Court of Appeal under sections 18.1 and 28 of the *Federal Courts Act*. Lastly, Tribunal orders and decisions made pursuant to the *Customs Act* can be appealed under that act to the Federal Court of Appeal or, under the *Excise Tax Act*, to the Federal Court. The Federal Court of Appeal heard 12 decisions of the Tribunal in 2015-2016 and 2 were overturned or remanded.

## **Judicial Review by NAFTA Binational Panel**

Tribunal findings or orders under sections 43, 44, 76.01, 76.02 and 76.03 of *SIMA* involving goods from the United States and Mexico may be reviewed by a binational panel established under *NAFTA*. No binational panel was established during the past year.

## **WTO Dispute Resolution**

Governments that are members of the WTO may challenge the Government of Canada in respect of Tribunal injury findings or orders in dumping and countervailing duty cases before the WTO Dispute Settlement Body. This is initiated by intergovernmental consultations under the WTO Dispute Settlement Understanding. During the year, Chinese Taipei requested consultations in relation to one of the Tribunal's *SIMA* findings and a WTO panel was subsequently established to hear the matter. This dispute was still ongoing at the end of the fiscal year.







## CHAPTER III

# TRADE REMEDY INQUIRIES AND REVIEWS

### Process

Under *SIMA*, the CBSA may impose anti-dumping and countervailing duties if Canadian producers are injured by imports of goods into Canada:

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

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

### Preliminary Injury Inquiries

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

In a preliminary injury inquiry, the Tribunal determines whether the evidence discloses a reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury. The primary evidence is the information received from the CBSA and submissions from parties. The Tribunal seeks the views of parties on what are the like goods and which Canadian producers comprise the domestic industry. In most cases, it does not issue questionnaires or hold a public hearing at the preliminary injury inquiry stage. The Tribunal completes its inquiry and renders its determination within 60 days.

If the Tribunal finds that there is a reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, it makes a determination to that effect, and the CBSA continues the dumping or subsidizing investigation. If there is no reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, the Tribunal terminates the inquiry, and the CBSA terminates the dumping or subsidizing investigation. The Tribunal issues reasons for its decision not later than 15 days after its determination.

## Preliminary Injury Inquiry Activities

	PI-2015-001	PI-2015-002	PI-2015-003
<b>Product</b>	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	Carbon and alloy steel line pipe	Large line pipe
<b>Type of case/country</b>	Dumping and subsidizing/India and Russia	Dumping and subsidizing/China	Dumping and subsidizing/China and Japan
<b>Date of determination</b>	August 10, 2015	October 27, 2015	In progress
<b>Determination</b>	Reasonable indication of injury or threat of injury	Reasonable indication of injury or threat of injury	
<b>Participants</b>	4	13	
<b>Pages of official record</b>	8,495	9,154	

## Preliminary Injury Inquiries Completed in Fiscal Year and in Progress at the End of the Fiscal Year

As illustrated in the above table, the Tribunal completed two preliminary injury inquiries in the fiscal year and one was in progress at the end of the year.

## Final Injury Inquiries

If the CBSA makes a preliminary determination of dumping or subsidizing, the Tribunal commences a final injury inquiry pursuant to section 42 of *SIMA*. The CBSA may levy provisional duties on imports from the date of the preliminary determination. The CBSA continues its investigation until it makes a final determination of dumping or subsidizing.

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

In conducting final injury inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. Under the direction of the Tribunal, ATSSC staff carries out extensive research for each inquiry. Questionnaires are sent to Canadian producers, importers, purchasers, foreign producers and exporters. Primarily on the basis of questionnaire responses, ATSSC staff prepares an investigation report that focuses on the factors that the Tribunal must consider in arriving at its decision on injury or retardation or threat of injury to a domestic industry. The report becomes part of the case record and is made available to counsel and parties.

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

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

The Tribunal holds a public hearing about 90 days after the commencement of the inquiry, i.e. after the CBSA has made a final determination of dumping or subsidizing. At the public hearing, Canadian producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused injury or retardation or is threatening to cause injury to a domestic industry. Importers, foreign producers and exporters may challenge the Canadian producers' case. After cross-examination by parties and questioning by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. In some inquiries, the Tribunal calls witnesses who are knowledgeable of the industry and market in question. Parties may also seek the exclusion of certain goods from the scope of a Tribunal finding.

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

## Final Injury Inquiry Activities

	NQ-2014-002	NQ-2014-003	NQ-2015-001	NQ-2015-002
<b>Product</b>	Oil country tubular goods	Photovoltaic modules and laminates	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	Carbon and alloy steel line pipe
<b>Type of case/country</b>	Dumping and subsidizing/Chinese Taipei, India, Indonesia, Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam	Dumping and subsidizing/China	Dumping and subsidizing/India and Russia	Dumping and subsidizing/China
<b>Date of finding</b>	April 2, 2015	July 3, 2015	January 6, 2016	March 29, 2016
<b>Finding</b>	Threat of injury	Threat of injury	No injury	Injury
<b>Questionnaires sent</b>	256	309	84	95
<b>Questionnaires received</b>	57	77	41	53
<b>Requests for exclusions</b>	3	6	-	-
<b>Requests for exclusions granted</b>	-	1	-	-
<b>Participants</b>	17	26	7	20
<b>Pages of official record</b>	17,400	16,981	12,773	13,050
<b>Public hearing days</b>	5	5	4	4
<b>Witnesses</b>	22	15	8	15

## Final Injury Inquiries Completed in the Fiscal Year

As illustrated in the above table, the Tribunal completed four final injury inquiries in the fiscal year. The completed inquiries concerned oil country tubular goods, photovoltaic modules and laminates and hot-rolled carbon steel plate and high-strength low-alloy steel plate. The following summaries were prepared for general information purposes only.

## NQ-2014-002—Oil Country Tubular Goods

This inquiry concerned certain dumped oil country tubular goods (OCTG) originating in or exported from Chinese Taipei, India, Indonesia, the Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam, and certain subsidized OCTG originating in or exported from India, Indonesia, the Philippines, Thailand, Ukraine and Vietnam.

On March 3, 2015, the President of the Canada Border Services Agency determined that the amounts of subsidy in relation to the goods from the Philippines, Thailand and Ukraine were insignificant and, therefore, terminated the subsidizing investigation in respect of those three countries. The Tribunal subsequently found that the volumes of subsidized goods from India, Indonesia and Vietnam were negligible and terminated its inquiry with respect to them.

The Tribunal sent requests to complete questionnaires to 4 Canadian producers, 67 potential importers, 42 potential purchasers and 143 potential foreign producers and exporters of OCTG. Of the 256 requests sent, the Tribunal received 4 replies from Canadian producers, 37 replies from importers, 28 of which were used in the Tribunal's analysis, 17 replies from purchasers and 9 replies from foreign producers.

There were 15 participants. During a five-day hearing, 22 witnesses appeared before the Tribunal. The official record contained 17,400 pages.

The Tribunal found that the dumped goods had not caused material injury to the domestic industry. The Tribunal found that domestic production did decrease over the period of inquiry but that the dumped imports did not appear to be fully responsible for the decline. The Tribunal observed that there was a decline in domestic sales; however, substantial declines in the total apparent market and intra-industry competition were important factors in the lost sales. In addition, the Tribunal found that, although there were gains in market share for importers and declines in profitability, capacity utilization, wages, productivity and investments, the dumped goods did not, in and of themselves, cause material injury to the domestic industry as prescribed by *SIMA*. Rather, the deterioration in performance experienced by the domestic industry during the period of inquiry was primarily due to other factors.

However, the Tribunal concluded that, in the following 12 to 18 months, significant volumes of the dumped goods were due to arrive in the domestic market. Due to the export-oriented nature of the subject countries, pressures caused by the decline in oil prices and the attractiveness of Canada as a destination for the dumped goods, the Tribunal found that the dumped goods were threatening to cause material injury to the domestic industry.

The Tribunal received three requests for exclusions from the finding and denied all three.

## NQ-2014-003—Photovoltaic Modules and Laminates

This inquiry concerned the dumping and subsidizing of certain photovoltaic modules and laminates (solar modules) originating in or exported from China.

The Tribunal sent requests to complete questionnaires to 28 potential producers of solar modules. Thirteen replies or partial replies were received. Of these 13 responses, 9 replies indicated that they were producers of like goods.

The Tribunal sent requests to complete questionnaires to 45 potential importers of solar modules. The Tribunal received 27 questionnaire replies: 9 of which were from firms indicating that they did not

import solar modules, 1 reply was not used and the remaining 17 replies indicated that they were importers of solar modules (13 distributors and 4 end users).

The Tribunal sent requests to complete questionnaires to 43 potential purchasers of solar modules. The Tribunal received 22 replies: 6 replies indicated that they did not purchase solar modules, 2 replies were not usable and the remaining 14 replies indicated that they were purchasers of solar modules.

The Tribunal sent requests to complete questionnaires to 193 potential exporters/foreign producers of solar modules in China. The Tribunal received 15 replies, three of which indicated that the firm was not producing solar modules.

There were 27 participants to the inquiry. During a five-day hearing, 15 witnesses appeared before the Tribunal. The official record contained 16,981 pages.

Heliene, Silfab, Eclipsall, Solgate and EnerDynamic submitted that they, together with Celestica Inc. (Celestica), constituted the domestic industry for the purposes of the Tribunal's inquiry. They argued that the "domestic industry" should be interpreted as excluding Canadian Solar Solutions Inc. (CSSI) because it was an importer and related to an exporter of the dumped and subsidized goods, with an overarching corporate strategy of supporting affiliated Chinese production facilities.

The parties opposite submitted that CSSI should be included in the "domestic industry". According to CSSI, the purpose of its relatively limited imports of the dumped and subsidized goods from affiliated Chinese exporters during the period of inquiry was to meet consumer demand and was not aggressive in nature.

The Tribunal found that it was appropriate to exclude CSSI from the "domestic industry".

The domestic industry did not claim that the dumped and subsidized goods had caused injury, but rather that they were threatening to cause injury.

The Tribunal found that the dumped and subsidized goods had not caused injury but threatened to cause injury to the domestic industry. The evidence established that there was substantial production capacity in China, a significant share of which was freely disposable, and that Chinese producers had a propensity to dump and subsidize solar modules or similar products in other major export markets, including the United States and the European Union. The Tribunal found that the collapse of sales experienced by several of the supporting parties in connection with the Ontario micro-FIT 3 program in 2014 and the market's behaviour since the imposition of provisional duties in early March 2015 also provided a proxy for what would happen when the domestic industry experienced the full impact of the dumped and subsidized goods, in the absence of any local content requirement in Ontario, by the end of 2015. Overall, given the specific set of projected circumstances created by the Ontario FIT Program, the Tribunal found that the likelihood of increased dumped and subsidized goods was clearly foreseen and imminent.

The Tribunal received a total of six requests to exclude products from its finding. The Tribunal granted one exclusion to which the domestic industry consented.

#### NQ-2015-001—Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate

This inquiry concerned the dumping and subsidizing of hot-rolled carbon steel plate and high-strength low-alloy steel plate originating in or exported from India and Russia.

The Tribunal sent requests to complete questionnaires to 3 known domestic mills that produce hot-rolled steel plate, 12 potential service centres that cut plate from hot-rolled coil, 23 importers, 15 purchasers and 31 foreign producers. The Tribunal received responses from all domestic mills, 9 service centres and 15 importers. One service centre indicated that it did not produce hot-rolled steel plate, while three importers replied that they had not imported hot-rolled steel plate during the period of inquiry. The Tribunal received eight responses from purchasers, five of which were complete and used for the investigation report and three of which were from respondents indicating that they had not purchased hot-rolled steel plate during the period of inquiry. The Tribunal received two complete responses from Indian producers, which were included in the investigation report.

There were seven participants to the inquiry. During a four-day hearing, eight witnesses appeared before the Tribunal. The official record contained 12,773 pages.

The Tribunal determined that while the steel plate fell along a continuum of different grades and dimensions, it remained appropriate to treat both discrete plate and cut-to-length plate as comprising a single class of goods. While the service centres generally tended to concentrate on narrower widths and domestic mills tended to concentrate on wider widths, the Tribunal found they together produced a full range of steel plate that competed with the dumped and subsidized goods and could be considered a single domestic industry for the purpose of the inquiry.

The Tribunal found that service centres were an increasingly important part of the domestic industry.

The Tribunal observed that imports decreased from 2012 to 2013 before increasing significantly to their highest point in 2014. Imports increased over 1,000 percent in 2014 before decreasing by 61 percent in the 2015 interim period as compared to the 2014 interim period.

The prices of the dumped and subsidized goods did not significantly undercut the prices of domestically-produced steel plate. Given that prices for both increased from 2013 to 2014, the Tribunal could not conclude that price depression occurred for the domestic industry as a whole. Moreover, while the price of domestic plate decreased in the 2015 interim period, the price of the imports actually increased during that same time. Therefore, the Tribunal found that the dumped and subsidized goods did not cause price depression during the 2015 interim period. Some of the domestic mills may have experienced price suppression in 2014; however, when the domestic industry as a whole was considered, the Tribunal found that the dumped and subsidized goods did not suppress the price of the domestically-produced plate over the period of inquiry.

The imports did not negatively impact the production of the domestic industry as a whole and the decline in the production level of the portion of the domestic industry composed of domestic mills was primarily attributable to other non-related factors rather than to the subject goods themselves. Moreover, the Tribunal found that other factors largely caused the domestic industry to lose sales and market share. With respect to profitability, the Tribunal found that it could not conclude that the dumped and subsidized goods, in and of themselves, negatively impacted the domestic industry's profitability. Furthermore, it did not appear that the dumped and subsidized goods had any impact on the productivity of the domestic industry. The Tribunal also noted that there was no evidence to support a causal relationship between employment, wages and imports of the dumped and subsidized goods.

The Tribunal observed that, although the imports could have some impact on the domestic industry in the coming 12 to 18 months, any such impact would not be material on the domestic industry as a whole. The domestic service centres had fared well during the period of inquiry and should fare well into the future.

As a result, the Tribunal found that the dumped and subsidized goods had not caused and were not threatening to cause material injury to the domestic industry.

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

There was one final injury inquiry in progress at the end of the fiscal year concerning carbon and alloy steel line pipe.

## **Public Interest Inquiries**

Following a finding of injury, the Tribunal notifies all interested parties that any submissions requesting a public interest inquiry must be filed within 45 days. The Tribunal may initiate, either after a request from an interested person or on its own initiative, a public interest inquiry following a finding of injury or threat of injury caused by dumped or subsidized imports, if it is of the opinion that there are reasonable grounds to consider that the imposition of all or part of the duties may not be in the public interest. If it is of this view, the Tribunal then conducts a public interest inquiry pursuant to section 45 of *SIMA*. The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by how much.

The Tribunal concluded one public interest inquiry during the fiscal year concerning concrete reinforcing bar.

### PB-2014-001—Concrete Reinforcing Bar

The public interest inquiry into concrete reinforcing bar centred on an assertion that there was a specific regional interest in the province of British Columbia, specifically with respect to the finding made by the Tribunal in Inquiry No. NQ-2014-001 respecting concrete reinforcing bar originating in or exported from China, Korea and Turkey. As such, the Tribunal's inquiry centred on activity relating to this specific market.

Information was sought via questionnaires, requests for information and a public hearing. The Tribunal made specific adjustments to questionnaires sent to downstream respondents such as fabricators. These questionnaires were tailored to retrieve a more direct view of the downstream market than would be typical in a final injury inquiry or an expiry review.

In total, the Tribunal sent 16 questionnaire requests to 3 domestic producers, 10 importers and 3 downstream purchasers. The Tribunal received a total of eight questionnaire responses from three domestic producers, three importers and two purchasers. The Tribunal also received one unsolicited response from a foreign producer, whose data provided insight into the foreign pricing model.

The Tribunal held a five-day public hearing in Vancouver, British Columbia, where representatives from the domestic industry, union and business organizations, the Government of British Columbia, fabricators and other downstream industries such as the construction sector, were able to provide oral argument for their respective positions. Many other provinces, municipalities and governments provided submissions during the public inquiry process. The official record contained 7,367 pages.

The Tribunal found no basis to form the opinion that the imposition of the duties in the full amount would not or might not be in the public interest. As such, on December 22, 2015, the Tribunal concluded that the public interest did not warrant a reduction or elimination of the duties on the subject goods imported

for use in British Columbia. On the basis of this negative decision, the Tribunal did not provide a report to the Minister of Finance.

## Interim Reviews

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

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

### Interim Review Activities

Interim Review No. RD-2013-003	
Product	Liquid dielectric transformers
Type of case/country	Dumping/Korea
Date of order	In progress
Order	
Participants	
Pages of official record	

### Requests for Interim Reviews and Interim Reviews Completed in the Fiscal Year

Interim Review No. RD-2013-003 concerning liquid dielectric transformers, which had been placed in abeyance pending the resolution of related proceedings before the Federal Court of Appeal, was continued and is now in progress.

## Expiries

Subsection 76.03(1) of *SIMA* provides that a finding or order expires after five years, unless an expiry review has been initiated. Not later than 10 months before the expiry date of the order or finding, the Registrar of the Tribunal publishes a notice of expiry in the *Canada Gazette*. The notice invites persons and governments to submit their views on whether the order or finding should be reviewed and gives direction on the issues that should be addressed in the submissions. If the Tribunal determines that an expiry review is not warranted, it issues an order with reasons for its decision. Otherwise, it initiates an expiry review.



## Expiry Activities

	LE-2015-001	LE-2015-002	LE-2015-003
<b>Product</b>	Steel grating	Flat hot-rolled carbon and alloy steel sheet and strip	Copper pipe fittings
<b>Type of case/country</b>	Dumping and subsidizing/China	Dumping and subsidizing/Brazil, China, Chinese Taipei, India and Ukraine	Dumping and subsidizing/China, Korea and United States
<b>Date of order or notice of expiry review</b>	August 12, 2015	December 8, 2015	March 22, 2016
<b>Decision</b>	Expiry review initiated	Expiry review initiated	Expiry review initiated
<b>Participants</b>	1	5	3
<b>Pages of official record</b>	230	1,822	360

As illustrated in the above table, the Tribunal decided to commence three expiry reviews in the fiscal year.

On the basis of submissions from interested parties, the Tribunal was of the view that expiry reviews were warranted and initiated Expiry Review No. RR-2015-001 concerning steel grating, Expiry Review No. RR-2015-002 concerning flat hot-rolled carbon and alloy steel sheet and strip and Expiry Review No. RR-2015-003 concerning copper pipe fittings.

## Expiry Reviews

When the Tribunal initiates an expiry review of a finding or an order, it issues a notice of expiry review and notifies the CBSA of its decision. The notice of expiry review is published in the *Canada Gazette* and notice is provided to all known interested parties.

The purpose of an expiry review is to determine whether anti-dumping or countervailing duties remain necessary. There are two phases in an expiry review. The first phase is the investigation by the CBSA to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the finding or order expires. If the CBSA determines that such likelihood exists with respect to any of the goods, the second phase is the Tribunal's inquiry into the likelihood of injury or retardation. If the CBSA determines that there is no likelihood of resumed dumping or subsidizing for any of the goods, the Tribunal does not consider those goods in its subsequent determination of the likelihood of injury and issues an order rescinding the order or finding with respect to those goods.

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

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

## Expiry Review Activities

	RR-2014-004	RR-2014-005	RR-2014-006	RR-2015-001	RR-2015-002	RR-2015-003
<b>Product</b>	Certain whole potatoes	Greenhouse bell peppers	Refined sugar	Steel grating	Flat hot-rolled carbon and alloy steel sheet and strip	Copper pipe fittings
<b>Type of case/country</b>	Dumping/United States	Dumping/Netherlands	Dumping and subsidizing/United States, Denmark, Germany, Netherlands, United Kingdom and European Union	Dumping and subsidizing/China	Dumping and subsidizing/Brazil, China, Chinese Taipei, India and Ukraine	Dumping and subsidizing/China, Korea and United States
<b>Date of order</b>	September 9, 2015	October 16, 2015	October 30, 2015	In progress	In progress	In progress
<b>Order</b>	Order continued	Finding rescinded	Orders continued			
<b>Questionnaires sent<sup>1</sup></b>	261	154	224			
<b>Questionnaires received<sup>2</sup></b>	35	67	32			
<b>Participants</b>	17	3	2			
<b>Pages of official record</b>	15,500	7,840	16,000			
<b>Public hearing days</b>	3	2	3			
<b>Witnesses</b>	8	7	11			

1. Requests that expiry review questionnaires be completed are sent to a comprehensive list of known domestic producers and to the largest importers and exporters; the completed questionnaires are for use by the CBSA and the Tribunal.

2. As in the case of final injury inquiries, the Tribunal focuses its questionnaire response follow-up on all known domestic producers and the largest importers, which generally account for 80 percent or more of the subject imports during the period of review.

## Expiry Reviews Completed in the Fiscal Year

As illustrated in the above table, the Tribunal completed three expiry reviews in the fiscal year.

### RR-2014-004—Potatoes

This expiry review concerned the dumping of certain whole potatoes exported from the United States, for use or consumption in the province of British Columbia.

The Tribunal sent requests to complete questionnaires to the B.C. Vegetable Marketing Commission (BCVMC), 6 B.C. agencies, 15 B.C. potato growers, 24 importers and 215 potential foreign producers of potatoes. The Tribunal received a reply from BCVMC, 5 replies from B.C. agencies, and 14 replies from B.C. potato growers. The Tribunal received 14 replies from importers, of which 10 were used in the Tribunal's analysis. The Tribunal received four replies from foreign producers, of which two were used in the Tribunal's analysis.

The Tribunal held a three-day public hearing in Vancouver, British Columbia, and heard oral arguments in support of a continuation of the finding from one party who presented five witnesses. Another party opposed the continuation of the finding and presented oral arguments as well as testimony from one witness. One party made five requests for product exclusions. At the hearing, the Tribunal invited two of its own witnesses who were cross-examined by one party. The official record contained 15,500 pages.

The Tribunal was of the view that to allow the expiry of the order would likely result in a significant increase in the volume of imports at prices that could be expected to significantly undercut, depress and

suppress those of British Columbia potatoes, thereby causing material injury to the industry in that province. Consequently, on September 25, 2015, the Tribunal continued its order. It granted a request to exclude whole potatoes certified as organic by a recognized certification agency.

#### RR-2014-005—Greenhouse Bell Peppers

This expiry review concerned the dumping of greenhouse bell peppers originating in or exported from the Netherlands.

The Tribunal sent requests to complete questionnaires to 57 known Canadian growers, 52 potential marketers and agencies, 17 potential importers and 25 potential foreign growers and exporters of greenhouse bell peppers. The Tribunal received replies from 34 domestic growers, 19 replies from marketers and agencies, 11 replies from importers and no replies from foreign growers and exporters of greenhouse bell peppers.

The Tribunal held a one-day hearing. The Tribunal heard oral arguments in support of a continuation of the finding from one party, and testimony from seven witnesses. An additional party supported the continuation of the finding but did not present oral arguments or call any witnesses. The Tribunal also heard from the two witnesses that it called. The official record contained 7,840 pages.

The Tribunal found that the expiry of the finding would not result in the importation of significant volumes of the imports at prices that would undercut and depress the prices of domestically-produced greenhouse bell peppers, and that the impact on the domestic industry's profitability would be minimal. For these reasons, on October 16, 2015, the Tribunal rescinded its finding in respect of the aforementioned goods.

#### RR-2014-006—Refined Sugar

This expiry review concerned the dumping of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States, Denmark, Germany, the Netherlands and the United Kingdom, and the subsidizing of the aforementioned goods originating in or exported from the European Union.

The Tribunal sent requests to complete questionnaires to known domestic producers, importers, foreign producers and exporters of refined sugar. The official record contained 16,000 pages. The responses to these questionnaires were used to prepare public and protected investigation reports. The Canadian Sugar Institute, an organization comprised of the two domestic producers, Redpath Sugar Ltd. and Lantic Inc., filed written submissions, witness statements and made arguments in support of a continuation of the orders. The Delegation of the European Union to Canada (EU Delegation) also filed written submissions. The Tribunal received two requests for product exclusions, which were filed by Golda's Kitchen Inc. and Kellogg Canada Inc.

The Tribunal held a three-day public hearing from September 8 to 10, 2015. The Tribunal heard oral arguments in support of a continuation of the orders from two parties, and testimony from nine witnesses. There were no parties opposed at the hearing; however, the EU Delegation made a closing statement.

Given the circumstances of this expiry review, after having tested separately the effects of dumping and subsidizing, the Tribunal found it appropriate to assess the effect of the dumping of refined sugar from the United States, Denmark, Germany, the Netherlands and the United Kingdom cumulatively with the effect of the subsidizing of refined sugar from the European Union. The Tribunal found that the expiry of

the orders would likely cause material injury to the domestic industry. For this reason, on October 30, 2015, the Tribunal continued its orders in respect of the aforementioned goods.

The Tribunal granted one of the two product exclusion requests it received, namely, specialty-coloured decorative sugar crystals in granulated form combined with carnauba wax and food colouring matter, imported in small retail-ready containers not exceeding 16 oz. for use exclusively as a superficial decoration in baked goods (such as pies, cakes, pastries, muffins, cookies, etc.) and other prepared foods.

## Expiry Reviews in Progress at the End of the Fiscal Year

There were three expiry reviews in progress at the end of the fiscal year.

## Judicial or Panel Reviews of *SIMA* Decisions

The following table lists Tribunal decisions that were before the Federal Court of Appeal under section 76 of *SIMA* in the fiscal year.

### Summary of Judicial or Panel Reviews

Case No.	Product	Country of Origin	Court File No./Status
RR-2012-004	Thermoelectric containers	China	A-42-14 Application dismissed (January 8, 2016)
RR-2014-003	Oil country tubular goods	China	A-177-15 In progress
NQ-2014-002	Oil country tubular goods	Chinese Taipei, India, Indonesia, Philippines, Korea, Thailand and Turkey	A-226-15 In progress
NQ-2015-001	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	India and Russia	A-46-16 In progress

Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not ordinarily participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.

As illustrated in the table above, there were no Tribunal decisions remanded by the Federal Court of Appeal during the fiscal year. An application for review of the Tribunal's finding in Inquiry No. NQ-2015-001 was filed with the Federal Court of Appeal. The Federal Court of Appeal dismissed the application for review of the Tribunal's order in Expiry Review No. RR-2012-004.

## WTO Dispute Resolutions

There is currently one Tribunal finding before the WTO Dispute Settlement Body (DSB), namely, dispute DS482: *Canada – Anti-Dumping Measures on Imports of Certain Carbon Steel Welded Pipe from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu*. At its meeting on March 10, 2015, the DSB established a panel. China, the European Union, Korea, Norway, the United Arab Emirates and the United States reserved their third-party rights. Subsequently, Brazil reserved its third-party rights. Following the agreement of the parties, the panel was composed on May 12, 2015.

There have been no other consultations or formal dispute settlement proceedings initiated regarding the Tribunal's determinations since March 2015.

## SIMA Findings and Orders in Force

As of December 31, 2015, there were 27 SIMA findings and orders in force.

### Summary of Findings and Orders in Force as of March 31, 2016

Inquiry No. or Expiry Review No.	Date of Decision	Product	Type of Case/Country	Related Decision No. and Date
NQ-2011-001	April 10, 2012	Pup joints	Dumping and subsidizing/China	
NQ-2011-002	May 24, 2012	Stainless steel sinks	Dumping and subsidizing/China	
NQ-2012-001	November 20, 2012	Liquid dielectric transformers	Dumping/Korea	
NQ-2012-002	November 30, 2012	Steel piling pipe	Dumping and subsidizing/China	
NQ-2012-003	December 11, 2012	Carbon steel welded pipe	Dumping/Chinese Taipei, India, Oman, Korea, Thailand and United Arab Emirates Subsidizing/India	
NQ-2013-002	November 12, 2013	Unitized wall modules	Dumping and subsidizing/China	
NQ-2013-003	November 19, 2013	Silicon metal	Dumping and subsidizing/China	
NQ-2013-004	December 18, 2013	Circular copper tube	Dumping/Brazil, Greece, China, Korea and Mexico Subsidizing/China	
NQ-2013-005	May 20, 2014	Hot-rolled carbon steel plate	Dumping/Brazil, Denmark, Indonesia, Italy, Japan and Korea	
NQ-2014-001	January 9, 2015	Concrete reinforcing bar	Dumping/China, Korea and Turkey Subsidizing/China	
NQ-2014-002	April 2, 2015	Oil country tubular goods	Dumping/Chinese Taipei, India, Indonesia, Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam	
NQ-2014-003	July 3, 2015	Photovoltaic modules and laminates	Dumping and subsidizing/China	
RR-2010-001	August 15, 2011	Flat hot-rolled carbon and alloy steel sheet and strip	Dumping/Brazil, China, Chinese Taipei, India and Ukraine Subsidizing/India	RR-2005-002 (August 16, 2006) NQ-2001-001 (August 17, 2001)
RR-2011-001	February 17, 2012	Copper pipe fittings	Dumping/United States, Korea and China Subsidizing/China	NQ-2006-002 (February 19, 2007)
RR-2012-001	January 8, 2013	Hot-rolled carbon steel plate	Dumping/China	RR-2007-001 (January 9, 2008) RR-2001-006 (January 10, 2003) NQ-97-001 (October 27, 1997)
RR-2012-002	March 11, 2013	Seamless carbon or alloy steel oil and gas well casing	Dumping and subsidizing/China	NQ-2007-001 (March 10, 2008)
RR-2012-003	August 19, 2013	Carbon steel welded pipe	Dumping and subsidizing/China	NQ-2008-001 (August 20, 2008)
RR-2012-004	December 9, 2013	Thermoelectric containers	Dumping and subsidizing/China	NQ-2008-002 (December 11, 2008)
RR-2013-001	December 20, 2013	Structural tubing	Dumping/Korea and Turkey	RR-2008-001 (December 22, 2008) NQ-2003-001 (December 23, 2003)
RR-2013-002	January 7, 2014	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	Dumping/Bulgaria, Czech Republic and Romania	RR-2008-002 (January 8, 2009) NQ-2003-002 (January 9, 2004)

<b>Inquiry No. or Expiry Review No.</b>	<b>Date of Decision</b>	<b>Product</b>	<b>Type of Case/Country</b>	<b>Related Decision No. and Date</b>
RR-2013-003	March 17, 2014	Aluminum extrusions	Dumping and subsidizing/China	NQ-2008-003 (March 17, 2009)
RR-2014-001	January 5, 2015	Carbon steel fasteners	Dumping/China and Chinese Taipei Subsidizing/China	RR-2009-001 (January 6, 2010) NQ-2004-005 (January 7, 2005)
RR-2014-002	January 30, 2015	Hot-rolled carbon steel plate and high-strength low-alloy plate	Dumping/Ukraine	NQ-2009-003 (February 2, 2010)
RR-2014-003	March 2, 2015	Oil country tubular goods	Dumping and subsidizing/China	NQ-2009-004 (March 23, 2010)
RR-2014-004	September 9, 2015	Whole potatoes	Dumping/United States	RR-2009-002 (10 September 2010) RR-2004-006 (September 12, 2005) RR-99-005 (September 13, 2000) RR-94-007 (September 14, 1995) RR-89-010 (September 14, 1990) CIT-16-85 (April 18, 1986) ADT-4-84 (June 4, 1984)
RR-2014-006	October 30, 2015	Refined sugar	Dumping/Denmark, Germany, Netherlands, United Kingdom and United States Subsidizing/European Union	RR-2009-003 November 1, 2010 RR-2004-007 (November 2, 2005) RR-99-006 (November 3, 2000) NQ-95-002 (November 6, 1995)
RR-2015-001	March 29, 2016	Steel grating	Dumping and subsidizing/China	NQ-2010-002 April 19, 2011

Note: For complete product descriptions, refer to the most recent finding or order available at [www.citt-tcce.gc.ca](http://www.citt-tcce.gc.ca).



## CHAPTER IV

# PROCUREMENT REVIEW

### Introduction

Potential suppliers that believe that they may have been unfairly treated during a procurement solicitation covered by *NAFTA*, the *AIT*, the *AGP*, the *CCFTA*, the *CPFTA*, the *CCOFTA*, the *CPAFTA*, the *CHFTA* or the *CKFTA*, or any other applicable trade agreement, may file a complaint with the Tribunal. The relevant provisions of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* allow a complainant to first make an attempt to resolve the issue with the government institution responsible for the procurement before filing a complaint.

The Tribunal's role is to determine whether the government institution followed the procurement procedures and other requirements specified in the applicable trade agreements.

When the Tribunal receives a complaint, it reviews it against the legislative criteria for filing. If there are deficiencies, the complainant is given an opportunity to correct them within the specified time limit. If the Tribunal decides to conduct an inquiry, the government institution is sent a formal notification of the complaint and a copy of the complaint itself. If the contract has been awarded, the government institution, in its acknowledgement of receipt of a complaint letter, provides the Tribunal with the name and address of the contract awardee. The Tribunal then sends a notification of the complaint to the contract awardee as a possible interested party. An official notice of the complaint is published in the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone the award of any contract pending the disposition of the complaint by the Tribunal.

After receipt of its copy of the complaint, the relevant government institution files a response called the Government Institution Report. The complainant and any intervener are sent a copy of the response and given an opportunity to submit comments. Any comments received are forwarded to the government institution and other parties to the inquiry.

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

The Tribunal then determines whether or not the complaint is valid. If it is, the Tribunal may make recommendations for remedies, such as re-tendering, re-evaluating or providing compensation to the complainant. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal should, by statute, be implemented to the greatest extent possible. The Tribunal may also award reasonable costs to the complainant or the responding government institution depending on the nature, circumstances and outcome of the case.

## Procurement Complaints

### Summary of Activities

	2014-2015	2015-2016
<b>Number of procurement cases received</b>		
Carried over from previous fiscal year	9	13
Received in fiscal year	69	70
<b>Total</b>	<b>78</b>	<b>83</b>
<b>Disposition—Complaints accepted for inquiry</b>		
Dismissed	3	6
Not valid	6	14
Valid or valid in part	13	3
Ceased	5	2
Withdrawn/abandoned	4	2
<b>Subtotal</b>	<b>31</b>	<b>27</b>
<b>Disposition—Complaints not accepted for inquiry</b>		
Lack of jurisdiction/not a potential supplier	4	6
Late filing	8	10
Not a designated contract/no reasonable indication of a breach/premature	20	30
Withdrawn/abandoned	2	2
<b>Subtotal</b>	<b>34</b>	<b>48</b>
<b>Outstanding at end of fiscal year</b>	<b>13</b>	<b>8</b>
<b>Decisions to initiate</b>	<b>33</b>	<b>24</b>
Remanded cases	-	-

### Summary of Selected Determinations

During the fiscal year, the Tribunal issued 70 decisions on whether to accept complaints for inquiry and 25 final decisions on complaints that were accepted for inquiry, for a total of 95 decisions. Eight cases were still in progress at the end of the fiscal year, one of which was still under consideration for being accepted for inquiry.

Of the complaints investigated by the Tribunal in carrying out its procurement review functions, certain decisions stand out because of their legal significance. Brief summaries of a representative sample of these cases are included below. These summaries have been prepared for general information purposes only.

#### PR-2015-011—Arctus Inc.

In this procurement inquiry, Arctus Inc. (Arctus) filed a complaint with the Tribunal under subsection 30.11(1) of the *CITT Act* with regard to a solicitation for the provision of services for the conduct



of a large-scale suspended matter monitoring demonstration project at sea using multispectral satellite imagery during an actual dredging project.

Firstly, Arctus alleged that the evaluation of the experience of its proposed resources was undertaken incorrectly. In this regard, Arctus asserted that the evaluators should have undertaken an on-line search of its proposed resources instead of limiting themselves to the contents of its bid. Secondly, Arctus alleged that some of the evaluation criteria were not relevant or were improperly weighted. In this regard, Arctus asserted that it was incorrect to require the orthorectification of images because this is a process that is not relevant to coastal waters and, further, that in any event the same points should not have been awarded to the “atmospheric corrections” step as was awarded to the “orthorectification” step. Thirdly, Arctus alleged that members of the evaluation committee did not have the necessary scientific expertise to analyze the bids received.

The Tribunal considered the requirement—contained in multiple trade agreements—that procuring entities provide potential suppliers with all the information necessary to permit them to submit responsive tenders, including the criteria which will be used for evaluating and awarding the contract. In addition, the Tribunal considered the stipulation—also found in multiple trade agreements—that to be considered for contract award, a proposal must conform to the essential requirements set out in the solicitation documentation.

With regard to Arctus’ assertion that the evaluators should have undertaken an on-line search of its proposed resources, the Tribunal noted that the onus regarding conformity to the essential requirements rests with Arctus, and since Arctus did not provide adequate information, the evaluators acted reasonably in assessing Arctus’ bid. In light of this finding, the Tribunal concluded that it was unnecessary to rule on the other grounds of the complaint.

This procurement inquiry was reiterative, in that it affirmed the rule that bidders are required to submit bids that conform to all of the essential requirements of solicitation documents, and cannot instead place an onus on the soliciting institution to undertake investigations with the objective of securing information not made available by such bidders.

#### PR-2014-048—Pomerleau Inc.

In this procurement inquiry, Pomerleau Inc. (Pomerleau) filed a complaint with the Tribunal under subsection 30.11(1) of the *CITT Act* with regard to a solicitation for the provision of construction management services. The solicitation was conducted by Brookfield Johnson Controls Canada LP (BJCC), a private party, on behalf of the Department of Public Works and Government Services (PWGSC).

Pomerleau alleged that its bid was improperly found to be non-compliant because provisions of the solicitation were misinterpreted or misapplied, that undisclosed criteria were used during the evaluation and that unwarranted clarifications were sought. In essence, Pomerleau asserted that the solicitation allowed it to include profit and overhead costs in the hourly rates for its proposed resources or, alternatively, that the solicitation was ambiguous on the issue.

In response to Pomerleau’s complaint, PWGSC filed a motion to dismiss on the basis that the Tribunal did not have jurisdiction to inquire into the complaint. In addition, PWGSC failed to disclose documents, contravened the Tribunal’s deadlines and informed the Tribunal—after expending the time it was allotted to respond to Pomerleau’s complaint—that it was unable to respond to the substantive grounds of the complaint because BJCC, and not it, was involved in the procurement process. Besides the above, PWGSC was ordered by the Tribunal to file submissions on the merits of Pomerleau’s complaint.

In its reasons, the Tribunal found it necessary to catalogue the procedural recalcitrance of counsel for PWGSC and to remark that “[n]o government institution should place the Tribunal in that situation again.” In addition, with regard to PWGSC’s motion to dismiss on the basis that the Tribunal did not have jurisdiction, the Tribunal noted that it had jurisdiction since the solicitation remained an instance of public procurement, with BJCC simply playing the role of PWGSC. The Tribunal also found that the solicitation was not—as PWGSC and BJCC asserted—a subcontract, since BJCC was not itself under contract to provide construction services to PWGSC but, instead, was acting as its agent with regard to the procurement of those services. In essence, the Tribunal concluded that public procurement conducted via a private party is public procurement nonetheless.

Concerning the merits of the complaint, the Tribunal concluded that it was not valid because Pomerleau, by including profit and overhead costs in the hourly rates for its proposed resources, actually failed to comply with the stated requirements of the solicitation. The revenue-generating structure of the solicitation was clear in that there was to be no mark-up of the direct labour cost but, instead, overhead costs related to supplying that direct labour were to be met indirectly through the construction manager’s fee.

#### PR-2015-026—Raytheon Canada Limited

In this procurement inquiry, Raytheon Canada Limited (Raytheon) filed a complaint with the Tribunal under subsection 30.11(1) of the *CITT Act* with regard to a solicitation on behalf of the Department of National Defence for the provision of an Integrated Soldier System Project (ISSP) pertaining to over 4,000 soldier-wearable communications suites, complete with required accessories, support equipment, contract management, training, logistic and engineering support. Raytheon alleged that PWGSC did not evaluate its bid fairly and that it evaluated the “availability” of its ISSP suite instead of its “performance”.

In attempting to substantiate its complaint, Raytheon asserted that there must have been “latent defects” that compromised the evaluation. Raytheon admitted that “. . . there is insufficient information available to pinpoint precisely what those latent defects are . . .” As Raytheon bore the onus of making the case that the solicitation process was not conducted in accordance with the trade agreements, the Tribunal declined to find for Raytheon in the midst of such a paucity of evidence. Further, the Tribunal found that Raytheon’s allegations were untimely in that Raytheon knew, or reasonably should have known, about the grounds of its complaint during the bid submission process. Thus, it was incumbent upon Raytheon, in keeping with the *Canadian International Trade Tribunal Regulations*, to file a complaint within the established time frame instead of adopting a “wait and see” stance.

Raytheon requested that a portion of the evaluation undertaken by PWGSC be subjected to *ex-post facto* analysis by an expert, with the objective of unveiling purported latent defects Raytheon alleged to exist regarding the evaluation. The Tribunal rejected this request, noting that it reviews procurement processes against the standard of reasonableness and affords a large amount of deference to evaluators. In addition, the Tribunal found that Raytheon’s proposed use of an expert was an improper attempt at justifying the “wait and see” stance it had adopted.

The Tribunal also found that Raytheon’s allegation that PWGSC did not evaluate its bid fairly was entirely bald and unsubstantiated, and with regard to the “availability” versus “performance” allegation, the Tribunal found as follows: “. . . Raytheon is stating that its ISSP suite could not be evaluated until any and all shortcomings dealing with “availability” had been ironed out. Raytheon’s position on this ground must be rejected, as that is not an evaluation, but testing and development for market readiness.”

## Disposition of Procurement Complaints

File No.	Complainant	Status/Decision
PR-2014-047	Lanthier Bakery Ltd.	Decision issued May 6, 2015 Complaint not valid
PR-2014-048	Pomerleau Inc.	Decision issued May 21, 2015 Complaint not valid
PR-2014-050	Samson & Associates	Decision issued April 13, 2015 Complaint not valid
PR-2014-053	Monroe Solutions Group Inc.	Decision issued June 10, 2015 Complaint dismissed
PR-2014-054	Monroe Solutions Group Inc.	Decision issued June 10, 2015 Complaint dismissed
PR-2014-055	Deloitte Inc.	Decision issued June 10, 2015 Complaint valid in part
PR-2014-056	Monroe Solutions Group Inc.	Decision issued June 10, 2015 Complaint dismissed
PR-2014-057	PricewaterhouseCoopers LLP	Decision issued April 13, 2015 Inquiry ceased
PR-2014-060	Marcomm Systems Group Inc.	Decision issued April 22, 2015 Complaint dismissed
PR-2014-061	Falcon Environmental Services Inc.	Decision issued May 13, 2015 Complaint not valid
PR-2014-067	Heddle Marine Services Inc.	Decision made on April 13, 2015 Late filing
PR-2014-068	JOLI Distribution F. Hendel Inc.	Decision made on April 8, 2015 Late filing
PR-2014-069	Accelerated Technology Laboratories, Inc.	Decision made on April 1, 2015 Complaint premature
PR-2015-001	Dalian Enterprises Inc.	Decision issued May 27, 2015 Complaint dismissed
PR-2015-002	Samson & Associates	Decision issued July 16, 2015 Complaint not valid
PR-2015-003	Juniper Networks	Decision made on April 29, 2015 Not a potential supplier
PR-2015-004	Workplace Medical Corp.	Decision issued July 27, 2015 Complaint not valid
PR-2015-005	Oproma Inc.	Complaint withdrawn on July 6, 2015
PR-2015-006	Optima	Decision made on May 21, 2015 Late filing
PR-2015-007	Space2place Design Inc.	Decision made on May 20, 2015 Complaint premature
PR-2015-008	Simex Defence Inc.	Decision made on May 25, 2015 Complaint premature
PR-2015-009	Survival Systems Training Limited	Decision made on June 3, 2015 Complaint premature
PR-2015-010	Survival Systems Training Limited	Decision issued September 3, 2015 Complaint not valid
PR-2015-011	Arctus Inc.	Decision issued October 7, 2015 Complaint not valid
PR-2015-012	Space2place Design Inc.	Decision issued October 30, 2015 Complaint valid
PR-2015-013	Konica Minolta Business Solutions (Canada) Ltd.	Decision made on July 3, 2015 No reasonable indication of breach
PR-2015-014	Workplace Medical Corp.	Decision made on July 3, 2015 Lack of jurisdiction

<b>File No.</b>	<b>Complainant</b>	<b>Status/Decision</b>
PR-2015-015	HeartZAP Services Inc.	Decision made on July 7, 2015 Complaint premature
PR-2015-016	Workplace Medical Corp.	Decision made on July 3, 2015 Lack of jurisdiction
PR-2015-017	Simex Defence Inc.	Decision made on July 7, 2015 No reasonable indication of breach
PR-2015-018	ATCO Structures & Logistics	Decision made on July 15, 2015 Complaint premature
PR-2015-019	Adirondack Information Management Inc.	Decision made on July 20, 2015 Complaint premature
PR-2015-020	Visiontec (2008) Limited	Decision made on July 27, 2015 Late filing
PR-2015-021	Méridien Maritime Réparation	Decision issued November 23, 2015 Complaint not valid
PR-2015-022	HeartZAP Services Inc.	Decision made on July 28, 2015 Not a designated contract
PR-2015-023	MasterBedroom Inc.	Decision made on August 14, 2015 No reasonable indication of a breach
PR-2015-024	MasterBedroom Inc.	Decision made on August 26, 2015 No reasonable indication of a breach
PR-2015-025	ATCO Structures & Logistics	Complaint withdrawn on September 17, 2015
PR-2015-026	Raytheon Canada Limited	Decision issued January 19, 2016 Complaint not valid
PR-2015-027	Coastal Hydropower Corporation / Sawyer-Douro Hydro LP	Decision made on September 11, 2015 Late filing
PR-2015-028	Pacific Northwest Raptors Ltd.	Complaint withdrawn on September 15, 2015
PR-2015-029	Workplace Medical Corp.	Decision made on September 28, 2015 Not a designated contract
PR-2015-030	Iron Mountain Information Management Services Canada, Inc.	Decision issued February 17, 2016 Complaint not valid
PR-2015-031	Eclipsys Solutions Inc.	Decision made on October 19, 2015 Lack of jurisdiction
PR-2015-032	Eclipsys Solutions Inc.	Decision made on October 26, 2015 Premature
PR-2015-033	Neopost Canada Limited	Decision issued December 29, 2015 Complaint not valid
PR-2015-034	Strength Tek Fitness and Wellness Consulting	Decision made on October 22, 2015 Not a designated contract
PR-2015-035	Talk Science to Me Communications Inc.	Decision issued January 12, 2016 Complaint valid
PR-2015-036	eVision Inc.	Decision made on November 6, 2015 No reasonable indication of a breach
PR-2015-037	Poulin Électrique Inc.	Decision made on November 4, 2015 Lack of jurisdiction
PR-2015-038	Eclipsys Solutions Inc.	Decision issued March 21, 2016 Complaint dismissed
PR-2015-039	Eclipsys Solutions Inc.	Decision issued February 4, 2016 Complaint dismissed
PR-2015-040	MD Charlton Co. Ltd	Decision made on November 20, 2015 Premature
PR-2015-041	Tektronix Canada Inc.	Decision made on November 20, 2015 No reasonable indication of a breach
PR-2015-042	Oshkosh Defence Canada Incorporated	Decision made on December 1, 2015 Premature
PR-2015-043	StenoTran Services Inc. and Atchison & Denman Court Reporting Services Ltd.	Accepted for inquiry–In progress

<b>File No.</b>	<b>Complainant</b>	<b>Status/Decision</b>
PR-2015-044	Wheel Systems International, Inc.	Decision made on December 15, 2015 No reasonable indication of a breach
PR-2015-045	J.K. Engineering Ltd.	Decision made on December 15, 2015 Late filing
PR-2015-046	Grand and Toy Limited	Decision made on December 15, 2015 Late filing
PR-2015-047	Madsen Power Systems Inc.	Accepted for inquiry–In progress
PR-2015-048	Dominion Diving Ltd.	Decision issued March 29, 2016 Complaint not valid
PR-2015-049	Venture Healthcare Inc.	Decision made on December 30, 2015 No reasonable indication of a breach
PR-2015-050	Cornerstone Occupational Therapy Consultants	Decision made on January 11, 2016 Not a designated contract
PR-2015-051	Oshkosh Defence Canada Incorporated	Accepted for inquiry–In progress
PR-2015-052	MasterBedroom Inc.	Decision made on January 12, 2016 Premature
PR-2015-053	ENVINT Consulting	Complaint withdrawn on January 15, 2016
PR-2015-054	Toromont Cat	Decision made on January 22, 2016 Late filing
PR-2015-055	Genesis Security Inc.	Decision made on February 2, 2016 Late filing
PR-2015-056	Azimuth Consulting Group Partnership	Decision made on February 1, 2016 No reasonable indication of a breach
PR-2015-057	Global Upholstery Co. Inc.	Decision made on February 18, 2016 Premature
PR-2015-058	Jaura Enterprises	Accepted for inquiry–In progress
PR-2015-059	Imperial Surgical Limited	Decision made on February 24, 2016 No reasonable indication of a breach
PR-2015-060	HDT Expeditionary Systems, Inc.	Accepted for inquiry–In progress
PR-2015-061	Ordre des traducteurs, terminologues et interprètes agréés du Québec	Decision made on February 25, 2016 Not a potential supplier
PR-2015-062	Helicopter Transport Services (Canada) Inc.	Decision made on February 29, 2016 No reasonable indication of a breach
PR-2015-063	Air Dynamics Co. Ltd.	Decision made on March 11, 2016 Late filing
PR-2015-064	MasterBedroom Inc.	Accepted for inquiry–In progress
PR-2015-065	Aero Support Canada Inc.	Decision made on March 14, 2016 Late filing
PR-2015-066	Vanderbeken Enterprises Ltd. dba Drycake	Decision made on March 9, 2016 Late filing
PR-2015-067	Oshkosh Defence Canada Incorporated	Accepted for inquiry–In progress
PR-2015-068	Renown Industries Ltd.	Decision made on March 21, 2016 No reasonable indication of a breach
PR-2015-069	Pico Envirotec Inc.	Decision made on March 29, 2016 Premature
PR-2015-070	M.D. Charlton Co. Ltd.	Under consideration

# Judicial Review of Procurement Decisions

## Decisions Appealed to the Federal Court of Appeal

File No.	Complainant Before the Tribunal	Applicant Before the Federal Court of Appeal	Court File No./Status
PR-2014-022	Shaw Industries Inc.	Shaw Industries Inc.	A—393—14 Application discontinued (April 2, 2015)
PR-2014-015 & PR-2014-020	CGI Information Systems and Management Consultants Inc.	CGI Information Systems and Management Consultants Inc.	A—498—14 Application dismissed (November 30, 2015)
PR-2014-030	4Plan Consulting Corp.	Attorney General of Canada	A—136—15 Application dismissed (January 26, 2016)
PR-2014-067	Heddle Marine Services Inc.	Heddle Marine Services Inc.	A-236-15 In progress
PR-2014-053	Monroe Solutions Group Inc.	Monroe Solutions Group Inc.	A-321-15 In progress
PR-2014-054 & PR-2014-056	Monroe Solutions Group Inc.	Monroe Solutions Group Inc.	A-323-15 In progress

Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal usually does not participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.



## CHAPTER V

# APPEALS

### Introduction

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

The appeal process is set in motion when a written notice of appeal is filed with the Registrar of the Tribunal within the time limit specified in the act under which the appeal is made. Certain procedures and time constraints are imposed by law and by the *Rules*; however, at the same time, the Tribunal strives to encourage a relatively informal, accessible, transparent and fair proceeding.

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

The respondent must also comply with time limits and procedural requirements. Ordinarily, within 60 days after having received the appellant's brief, the respondent must file with the Tribunal a brief setting forth the respondent's position and provide a copy to the appellant. The Registrar of the Tribunal, when acknowledging receipt of the appeal, schedules a hearing date. Hearings are generally conducted in public. The Tribunal publishes a notice of the hearing in the *Canada Gazette* to allow other interested persons to attend. Depending on the act under which the appeal is filed, the complexity and potential significance of the matter at issue, appeals will be heard by a panel of one or three members. Persons may intervene in an appeal by filing a notice stating the nature of their interest in the appeal and indicating the reason for intervening and how they would assist the Tribunal in the resolution of the appeal.

## Hearings

An individual may present a case before the Tribunal in person or be represented by counsel. The respondent is generally represented by counsel from the Department of Justice. In accordance with Rule 25 of the *Rules*, appeals can be heard by way of a hearing at which the parties or their counsel appear before the Tribunal or by way of written submissions (file hearing).

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

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

Within 120 days of the hearing, the Tribunal endeavours to issue a decision on the matters in dispute, including the reasons for the decision.

If the appellant, the respondent or an intervener disagrees with the Tribunal's decision, the decision can be appealed on a question of law to the Federal Court of Appeal or, in the case of the *Excise Tax Act*, the Federal Court (where the case will be heard *de novo* by the court).

## Extensions of Time

Under section 60.2 of the *Customs Act*, a person may apply to the Tribunal for an extension of time to file a request for a re-determination or a further re-determination with the CBSA. The Tribunal may grant such an application after the CBSA has refused an application under section 60.1 or when 90 days have elapsed after the application was made and the person has not been notified of the CBSA's decision. Under section 67.1, a person may apply to the Tribunal for an extension of time within which to file a notice of appeal with the Tribunal. During the fiscal year, the Tribunal issued two orders under the *Customs Act*, granting an extension of time in both cases. There were no outstanding requests under the *Customs Act* at the end of the fiscal year.

Under section 81.32 of the *Excise Tax Act*, a person may apply to the Tribunal for an extension of time in which to serve a notice of objection with the Minister of National Revenue under section 81.15 or 81.17 or file a notice of appeal with the Tribunal under section 81.19. During the fiscal year, the Tribunal did not issue any orders granting or denying extensions of time under the *Excise Tax Act*. There were no outstanding requests under the *Excise Tax Act* at the end of the fiscal year.

## Appeals Received and Heard

During the fiscal year, the Tribunal received 40 appeals, excluding 2 appeals that were received on remand from the Federal Court of Appeal.

The Tribunal heard 29 appeals, 27 under the *Customs Act* and 2 under *SIMA*. It issued decisions on 28 appeals, which consisted of 26 appeals under the *Customs Act* and 2 under *SIMA*.



Forty appeal cases were outstanding at the end of the fiscal year, including four that are remand cases.

## Appeals Before the Tribunal in Fiscal Year 2015-2016

Appeal No.	Appellant	Date of Decision	Status/Decision
<i>Customs Act</i>			
AP-2009-046R	Igloo Vikski Inc.		In abeyance
AP-2011-014	De Ronde Tire Supply, Inc.	July 29, 2015	Allowed in part
AP-2011-057R and AP-2011-058R	Marmen Énergie Inc. and Marmen Inc.		In progress
AP-2012-018	Helly Hansen Canada Limited		In abeyance
AP-2012-034	Federal-Mogul Canada Limited	November 10, 2015	Dismissed
AP-2012-037	Northern Amerex Marketing Inc.		In abeyance
AP-2012-052R	Cross Country Parts Distributors Ltd.		In progress
AP-2013-021	Stylus Sofas Inc.	August 19, 2015	Allowed
AP-2013-022	Stylus Atlantic	August 19, 2015	Allowed
AP-2013-023	Stylus Ltd.	August 19, 2015	Allowed
AP-2013-024	Terravest (SF SUBCO) Limited Partnership	August 19, 2015	Allowed
AP-2013-029R	Eastern Division Henry Schein Ash Arcona Inc.		In progress
AP-2013-038	Sunpan Trading & Importing Inc.		In progress
AP-2014-001	Furlani's Food Corp.	April 8, 2015	Withdrawn
AP-2014-007	Wal-Mart Canada (IMD) Corp.	May 7, 2015	Withdrawn
AP-2014-008	HBC Imports c/o Zellers	May 7, 2015	Withdrawn
AP-2014-009	Maples Industries, Inc.		In progress
AP-2014-013	AMD Ritmed Inc.	September 24, 2015	Allowed
AP-2014-014	Oya Costumes Inc.	July 8, 2015	Withdrawn
AP-2014-015	AMD Ritmed Inc.	September 24, 2015	Allowed
AP-2014-017	Bri-Chem Supply Ltd.	September 18, 2015	Allowed
AP-2014-018	Air Canada		In abeyance
AP-2014-020	Wakefield Canada Inc.	June 9, 2015	Withdrawn
AP-2014-021	Worldpac Canada	February 18, 2016	Dismissed
AP-2014-023	Dealers Ingredients Inc.		In progress
AP-2014-024	Globe Union (Canada Inc.)		In progress
AP-2014-025	ContainerWest Manufacturing Ltd.	July 27, 2015	Dismissed
AP-2014-026	The Home Depot Canada	September 8, 2015	Allowed
AP-2014-027	Ever Green Ecological Services Inc.	September 18, 2015	Allowed
AP-2014-028	Southern Pacific Resource Corp.	September 18, 2015	Allowed
AP-2014-029	Liteline Corporation	February 1, 2016	Dismissed
AP-2014-030	Knife & Key Corner Ltd.	September 14, 2015	Dismissed
AP-2014-031	Conteneurs Shop Containers		In abeyance
AP-2014-032	Les Services de Conteneurs A.T.S. Inc.		In abeyance
AP-2014-034	Synnex Canada Ltd.	October 7, 2015	Dismissed
AP-2014-035	Rona Corporation	July 14, 2015	Withdrawn
AP-2014-036	Andritz Hydro Canada Inc.	November 13, 2015	Dismissed
AP-2014-037	Rona Corporation	April 21, 2015	Withdrawn
AP-2014-038	CBM N.A. Inc.	September 11, 2015	Withdrawn
AP-2014-039	P. Matheson	September 21, 2015	Dismissed
AP-2014-040	GrimmWorks Inc.	June 15, 2015	Dismissed

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2014-041	Tri-Ed Ltd.		In progress
AP-2014-042	EMCO Corporation Westlund	December 21, 2015	Allowed
AP-2014-043	Richardson Oilseed Ltd.	November 13, 2015	Withdrawn
AP-2014-044	Wolseley-Western Mechanical		In abeyance
AP-2014-045	Les pièces d'auto Transbec		In abeyance
AP-2014-046	D. S.	June 8, 2015	Allowed
AP-2014-047	Orbea USA	September 24, 2015	Withdrawn
AP-2015-001	Innovex Produits Techniques Inc.		In progress
AP-2015-002	The Source (Bell) Electronics Inc.	January 20, 2016	Dismissed
AP-2015-003	Costco Wholesale Canada Ltd.	August 10, 2015	Withdrawn
AP-2015-004	Rimowa North America Inc.	January 6, 2016	Allowed
AP-2015-005	Implus Footcare LLC	August 17, 2015	Withdrawn
AP-2015-006	Callaway Golf Company	September 4, 2015	Withdrawn
AP-2015-007	Logistik Unicorp Inc.	January 8, 2016	Withdrawn
AP-2015-008	E.Wallace	November 30, 2015	Dismissed
AP-2015-009	Les pièces d'auto Transit Inc.		In abeyance
AP-2015-010	D. Josefowich		In progress
AP-2015-011	J. Cheese Inc.		In progress
AP-2015-012	Jakks Pacific Inc.	March 30, 2016	Dismissed
AP-2015-013	Y. Gosselin		In progress
AP-2015-014	Costco Wholesale Canada Ltd.		In abeyance
AP-2015-015	Stategis Inernational Inc.	October 29, 2015	Withdrawn
AP-2015-016	Uponor Ltd.	December 2, 2015	Withdrawn
AP-2015-017	Uponor Ltd.	December 2, 2015	Withdrawn
AP-2015-018	Délices de la Forêt Inc.		In progress
AP-2015-019	Y. Chui	December 9, 2015	Withdrawn
AP-2015-020	Univar Canada Ltd.		In progress
AP-2015-021	Rona Corporation		In progress
AP-2015-022	Schlumberger Canada Limited		In progress
AP-2015-023	Summer Infant Canada Ltd.		In abeyance
AP-2015-024	Toys R Us		In progress
AP-2015-025	Groupe SEB Canada Ltd.	March 7, 2016	Withdrawn
AP-2015-026	Digital Canoe Inc.		In progress
AP-2015-027	Nestlé Canada Inc.		In progress
AP-2015-028	First Jewelry Ltd.		In progress
AP-2015-029	Sowa Tool and Machine Company Limited		In progress
AP-2015-030	A. Waller		In abeyance
AP-2015-031	G. Bradford		In progress
AP-2015-032	Rona Corporation		In progress
AP-2015-033	Build.com Inc.		In progress
AP-2015-034	Best Buy Canada Ltd.		In progress
AP-2015-035	CDC Foods Inc.		In progress
AP-2015-036	P & F USA Inc.		In progress
<b>Excise Tax Act</b>			
AP-2012-002	Imperial Oil Limited, McColl-Frontenac Petroleum Inc.		In progress
AP-2012-003	Imperial Oil Limited, McColl-Frontenac Petroleum Inc.		In progress
<b>Special Import Measures Act</b>			
EA-2014-001	Canadian Tire Corporation, Limited	March 17, 2016	Withdrawn

Appeal No.	Appellant	Date of Decision	Status/Decision
EA-2014-002	Robertson Inc.	January 25, 2016	Dismissed
EA-2014-003	Robertson Inc.	January 25, 2016	Dismissed
EA-2015-001	PrimeSource Building Products Canada Corporation	April 28, 2015	Withdrawn
EA-2015-002	Mertex Canada Inc.	March 2, 2016	Withdrawn
EA-2015-003	Sistemalux Inc.		In Progress

## Summary of Selected Decisions

Of the many cases heard by the Tribunal, several decisions issued during the fiscal year stand out, either because of the particular nature of the product in issue or because of the legal significance of the case. Brief summaries of a representative sample of such decisions follow. These summaries have been prepared for general information purposes only.

### AP-2014-026—The Home Depot Canada v. President of the Canada Border Services Agency

This appeal concerned the tariff classification of 24-inch Eurostone bases with sinks (vanities), which are referred to in this summary as the “goods in issue”. They consisted of a sink of imitation porcelain, as well as a small two-door wooden cabinet.

The CBSA had originally determined that the goods in issue were properly classified under tariff item No. 9403.60.10 of the schedule to the *Customs Tariff* as other wooden furniture for domestic purposes. Home Depot argued that the goods in issue should be classified under tariff item No. 6910.90.00 as other ceramic sinks and similar sanitary fixtures.

In concert with the *Explanatory Notes to the Harmonized Commodity Description and Coding System*, the *Customs Tariff* defines furniture as either movable articles designed for placing on the ground, or as articles designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles. In comparison, ceramic sinks and similar sanitary fixtures are defined as fittings designed to be permanently fixed in place, normally by connection to the water or sewage system.

As required by the *Customs Tariff*, the Tribunal undertook its analysis pursuant to the *General Rules for the Interpretation of the Harmonized System* (the *General Rules*). The *General Rules* provide for the sequential application of rules as deemed necessary, commencing with Rule 1 and proceeding to Rule 6. With regard to the possible classification of the goods in issue as furniture, the Tribunal found that, pursuant to Rule 1, the goods are neither movable nor for holding various objects or articles and, thus, do not fit the definition of furniture. With regard to the possible classification of the goods in issue as ceramic sinks and similar sanitary fixtures, the Tribunal noted that, once again, pursuant to Rule 1, the goods are designed to be permanently fixed in place.

However, as the goods include a small wooden cabinet capable of being used for storage, the Tribunal considered the applicability of Rule 2 (b) of the *General Rules*. That rule provides that “[a]ny reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of goods of such material or substance” and, further, that “[t]he classification of goods consisting of more than one material or substance shall be in accordance with the principles of Rule 3.”

In order to determine the proper basis for applying the instruction in Rule 2 (b) that goods consisting of more than one material be classified in accordance with Rule 3, the Tribunal considered the explanatory notes to Rule 2 (b). Those explanatory notes provide in part that Rule 2 (b) cannot, in essence, be used to “widen” a heading so that, pursuant to the continued application of Rule 1, it covers goods that would not

normally fit within the heading. Thus, rather than continue with a forced application of Rule 1, such that a heading is widened, recourse is instead to be had to Rule 3. The converse is that if Rule 1 can be applied in the classification of goods consisting of more than one substance, without the widening of a heading, that rule suffices for classification and Rule 3 need not be applied.

For the facts in this appeal, the operation of the explanatory notes to Rule 2 (b) means that Rule 1 cannot be used to classify the goods in issue under the heading for ceramic sinks and similar sanitary fixtures unless the included wooden cabinet does not widen the description in that heading. Considering its size and functionality, the Tribunal found that, as the principal purpose of the wooden cabinet is to provide necessary support to the sink, it does not widen the description in the heading for ceramic sinks and similar sanitary fixtures. The goods in issue were thus conclusively classified as ceramic sinks and similar sanitary fixtures pursuant to Rule 1.

The appeal provided a rare opportunity for the consideration of Rule 2 of the *General Rules*, inclusive of its ambit, as well as its role in delimiting and enabling the consideration of Rule 3.

AP-2013-021, AP-2013-022, AP-2013-023 and AP-2013-024—Stylus Sofas Inc., Stylus Atlantic, Stylus Ltd. and Terravest (SF Subco) Limited Partnership v. President of the Canada Border Services Agency

These appeals dealt with the question of whether certain sofas, accent chairs, dining chairs, and ottomans, which are referred to in this summary as the “goods in issue”, were properly classified under tariff item Nos. 9401.61.10 and 9401.71.10 of the schedule to the *Customs Tariff* as other upholstered seats, with wooden or metal frames, for domestic purposes, as determined by the CBSA, or should instead be classified under tariff item Nos. 9401.61.90 and 9401.71.90 as other upholstered seats, with wooden or metal frames, other than for domestic purposes, as claimed by the appellant, Stylus Sofas Inc., Stylus Atlantic, Stylus Ltd. and Terravest (SF Subco) Limited Partnership (together, Stylus).

While the goods in issue had been classified as being “for domestic purposes” at the time of importation, Stylus later asserted that the goods were for non-domestic purposes, specifically hotel use, and should thus be re-classified.

The parties agreed, and the Tribunal accepted, that the goods are properly classified under heading 94.01 as “[s]eats . . . and parts thereof”, as well as under subheadings 9401.61 and 9401.71 as upholstered seats with wooden or metal frames. Thus, the disagreement between the parties was limited to classification at the tariff item level.

As is the case in appeals of this kind, the onus was on the appellant, Stylus, to demonstrate that the classification determined by the CBSA was incorrect. To discharge this onus, it was incumbent on Stylus to show that the intended use of the goods in issue, as opposed to their actual use, is non-domestic in nature.

To discharge its onus, Stylus contended that the wording of tariff item Nos. 9401.61.10 and 9401.71.10—“for domestic purposes”—creates an end-use provision, such that the Tribunal must look to the intended use of the goods in issue rather than the actual usage of the goods by purchasers. Stylus asserted that the goods may be used in domestic settings, but that this usage would not contradict their primary intended purpose. Stylus then went on to provide evidence supportive of the conclusion that the goods in issue are “contract furniture” for the hospitality industry and that such furniture is typically more robust and has greater durability than furniture meant for domestic settings.

Utilizing the evidence placed on the record, and considering factors such as the design, characteristics, marketing and pricing of the goods in issue, inclusive of considerations such as durability,

flammability, and the use of bycast leather, the Tribunal concluded that Stylus had discharged its onus and, thus, allowed the appeals.

The CBSA, by way of a secondary contention, argued that hotels are actually domestic settings since persons and families treat hotels as “homes away from home” and, therefore, goods intended for use in hotels are properly classified as being “for domestic purposes”. However, Stylus remarked, and the Tribunal concluded, that such a line of reasoning, if accepted, would strip the tariff classifications for non-domestic or “other” purposes of any meaning whatsoever. The Tribunal instead noted that hotels are in fact businesses as opposed to homes.

These appeals assisted in the clarification of the *Customs Act* treatment of hospitality establishments for the purposes of the tariff classification of certain imported goods intended for use in such establishments.

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

Appeal No.	Appellant Before the Tribunal	Appellant Before the Court	File No./Status
AP-2011-033	Costco Wholesale Canada Ltd.	Costco Wholesale Canada Ltd.	A—360—14 Appeal dismissed (April 28, 2015)
AP-2013-029	Eastern Division Henry Schein Ash Arcona Inc.	Eastern Division Henry Schein Ash Arcona Inc.	A—368—14 Appeal allowed (October 20, 2015)
AP-2012-052	Cross Country Parts Distribution Ltd.	Cross Country Parts Distribution Ltd.	A—384—14 Appeal allowed in part (September 8, 2015)
AP-2013-057	BSH Home Appliance Ltd.	BSH Home Appliance Ltd.	A—32—15 In progress
AP-2012-035	Canadian Tire Corporation, Limited	Canadian Tire Corporation, Limited	A—34—15 Appeal dismissed (January 25, 2016)
AP-2012-009	Volpak Inc.	Volpak Inc.	A-197-15 In progress
AP-2014-025	ContainerWest Manufacturing Ltd.	ContainerWest Manufacturing Ltd.	A-351-15 In progress
AP-2011-014	De Ronde Tire Supply, Inc.	President of the Canada Border Services Agency	A-467-15 Appeal discontinued (November 10, 2015)
AP-2014-017	Bri-Chem Supply Ltd.	Attorney General of Canada	A-534-15 In progress
AP-2014-027	Ever Green Ecological Services Inc.	Attorney General of Canada	A-535-15 In progress
AP-2014-028	Southern Pacific Resource Corp.	Attorney General of Canada	A-536-15 In progress

Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not always participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.





## CHAPTER VI

# STANDING TEXTILE REFERENCE

### Introduction

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as last amended on October 27, 2005, the Tribunal is directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and, in respect of those requests, to make recommendations to the Minister of Finance that would maximize net economic gains to Canada.

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

During fiscal year 2014-2015, the Tribunal received no requests for tariff relief and did not issue any reports to the Minister of Finance.

### Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, in its manufacturing operations. The textile inputs on which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60 of the schedule to the *Customs Tariff*; 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. The following yarns are not included in the textile reference:

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

### Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several partial or complete tariff lines, textile and/or

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

## Process

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

## Filing and Notification of a Request

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

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

## Investigations

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

Interested parties include all persons whose rights or pecuniary interests may be affected by the Tribunal’s recommendations. Interested parties are given notice of the request and can participate in the investigation.

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

In most cases, a public hearing is not required and the Tribunal will dispose of the matter on the basis of written submissions, including the request, the investigation report and all submissions and evidence filed with the Tribunal. In cases where the written record is not sufficient to dispose of the matter, a public hearing is held.

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



## Recommendations to the Minister of Finance

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 100 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, it will issue its recommendations within an earlier specified time frame.

## Request for Review

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may ask the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify the request.

## Review on Expiry

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

## Summary of Activities

### New Requests

	2014-2015	2015-2016
<b>Requests</b>		
Received	-	-
Withdrawn	-	-
Awaiting the initiation of an investigation	-	-
Investigations completed during the fiscal year	-	-
Investigations in progress at end of the fiscal year	-	-
<b>Recommendations to the Minister of Finance</b>		
Tariff relief	-	-
No tariff relief	-	-
<b>Reports to the Minister of Finance</b>		
<b>Cumulative totals (since 1994)</b>		
Requests received	187	187
<b>Recommendations to the Minister of Finance</b>		
Tariff relief	115	115
No tariff relief	49	49