

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2017**

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June 22, 2017

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, 2017.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jean Bédard', with a stylized flourish at the end.

Jean Bédard, Q.C.
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 Remedy Injury Inquiries

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. During fiscal year 2016-2017, the Tribunal concluded 12 proceedings under *SIMA*. The Tribunal issued all its decisions within the tight deadlines set out in *SIMA*.

Procurement Inquiries

During fiscal year 2016-2017, the Tribunal received 70 procurement complaints and issued 65 decisions on whether to accept complaints for inquiry or not. The Tribunal also issued 23 final decisions on merit and six decisions on notices of motion where complaints were accepted for inquiry. Combined, this represented a total of 94 decisions. The 70 complaints received in this fiscal year pertained to 67 different contracts with a collective value in excess of \$5.5 billion—the greatest sum in the history of Canada’s procurement review system. All procurement inquiry decisions were issued within legislated deadlines.

Customs and Excise Appeals

A total of 52 appeals were filed during the reporting period. The Tribunal normally scheduled hearings within 165 days of receipt of notices of appeal, though requests for postponements and abeyances typically result in extensions. The Tribunal issued 24 decisions under the *Customs Act*, one under *SIMA* and four further to a Federal Court of Appeal remand. Every decision was issued within 120 days of being heard by the Tribunal (the Tribunal’s target is to issue 70% of customs and excise appeal decisions within this time frame).¹ The average appeal was decided within 87 days of being heard.

Economic and Tariff Inquiries

For the first time in several years, the Governor in Council referred a matter to the Tribunal for inquiry during the fiscal year. The Tribunal inquired into whether the imposition of anti-dumping duties on imports of gypsum board from the United States would be in Canada’s economic, trade or commercial interests. The Tribunal concluded its inquiry and made recommendations to the Government of Canada in January 2017.

Caseload

The first table below contains statistics pertaining to the Tribunal’s caseload for 2016-2017. The second table contains statistics relating to other case-related activities in 2016-2017. These statistics illustrate the complexity and diversity of the cases considered by the Tribunal.

1. 120 days run from receipt of the final submission to the Tribunal, whether oral or written.

Tribunal Caseload Overview—2016-2017

	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, 2017)
Trade remedy injury inquiries								
Preliminary injury inquiries	1	4	5	N/A	N/A	4	0	1
Inquiries	0	4	4	N/A	N/A	2	0	2
Requests for public interest inquiries	0	0	0	0	0	0	0	0
Public interest inquiries	0	0	0	0	0	0	0	0
Requests for interim reviews	0	3	3	0	0	0	0	3
Interim reviews	1	2	3	N/A	N/A	2	0	1
Expiries ¹	0	2	2	1	0	1	0	1
Expiry reviews	3	1	4	N/A	N/A	3	0	1
Remanded cases	0	0	0	N/A	N/A	0	0	0
TOTAL	5	16	21	1	0	12	0	9
Procurement inquiries								
Complaints received	1	70	71	32	33	65	4	2
Complaints accepted for inquiry	7	N/A	7	N/A	N/A	29	3	7
Remanded cases ²	0	0	0	N/A	N/A	0	N/A	0
TOTAL	8	70	78	32	33	94	7	9
Customs and excise appeals								
Extensions of time								
<i>Customs Act</i>	0	1	1	N/A	N/A	0	0	1
<i>Excise Tax Act</i>	0	0	0	N/A	N/A	0	0	0
TOTAL	0	1	1	N/A	N/A	0	0	1
Appeals								
<i>Customs Act</i>	35	52	87	N/A	N/A	24	24	39
<i>Excise Tax Act</i>	0	0	0	0	0	0	0	0
<i>Special Import Measures Act</i>	1	0	1	N/A	N/A	1	0	0
Remanded cases	4	0	4	N/A	N/A	4	0	0
TOTAL	40	52	92	N/A	N/A	29	24	39
Economic and tariff inquiries								
References	0	1	1	N/A	N/A	1	0	0
<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 2016-2017

	Trade Remedy Injury Inquiries	Procurement Inquiries	Customs and Excise Appeals	Economic and Tariff Inquiries	TOTAL
Orders					
Disclosure orders	37	0	0	3	40
Cost award orders	N/A	12	N/A	N/A	12
Compensation orders	N/A	0	N/A	N/A	0
Production orders	1	2	0	0	3
Postponement of award orders	N/A	6	N/A	N/A	6
Rescission of postponement of award orders	N/A	1	N/A	N/A	1
Directions/administrative rulings					
Requests for information	1,100	0	0	0	1,100
Motions	0	15	0	0	15
Other statistics					
Public hearing days	20	2	25	4	51
File hearings ¹	7	65	8	0	80
Witnesses	98	2	50	0 ³	150
Participants	119	110	108	124	461
Questionnaire replies	290	N/A	N/A	0	290
Pages of official records ²	101,875	63,118	33,583	60	198,636
<p>1. A file hearing occurs where the Tribunal renders a decision on the basis of written submissions, without holding a public hearing.</p> <p>2. Estimated.</p> <p>3. Please note that several witnesses testified in both Inquiry No. NQ-2016-002 and Reference No. GC-2016-001. These matters were heard concurrently over nine days. Approximately five days were spent on the former and four days were spent on the latter. All witnesses, however, are reflected under the "Trade Remedy Injury Inquiries" column.</p> <p>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 trade remedy cases, procurement cases, customs and excise tax appeals and government-mandated economic and tariff inquiries.

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
- advise 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
SIMA	
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
Customs Act	
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
Excise Tax Act	
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
Energy Administration Act	
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.

In accordance with section 35 of the *CITT Act*, the Tribunal's hearings are carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal proceeds through file hearings (hearings based on written submissions alone) or public hearings. In

February 2017, the Tribunal conducted a file hearing in an expiry review for the first time in order to save time and costs for the parties as part of a wider effort to make the Tribunal more accessible.

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's combined hearing on the trade remedy and the economic and tariff inquiries relating to the Western Canadian gypsum board market was held in Edmonton, Alberta, in November and December 2016.

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 as those of a court of justice. In February 2017, the Tribunal began to treat its digital records as its official records and encouraged parties to file documents and cite authorities electronically.

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. The Tribunal modified its Web site between January and March 2017 to make it easier for parties to find helpful, up-to-date information.

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.

In April 2016, Mr. Stephen A. Leach resigned as Chairperson. Mr. Jean Bédard served as Acting Chairperson for the balance of the year. The other members of the Tribunal were Mr. Jason W. Downey, Ms. Ann Penner, Mr. Daniel Petit, 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 internal services and facilities. In the autumn of 2016, the Trade Remedies Investigations Branch of the CITT Secretariat was restructured to make it more streamlined and well prepared to handle future increases in the Tribunal's case load.

Outreach

The Tribunal's 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 met with the Tribunal in Ottawa, Ontario, on April 19 and November 1, 2016. The Tribunal 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. The Advisory Committee's reports and the Tribunal's responses are available on the Tribunal's Web site.

Members of the Tribunal also met with peers from around the world. Notably, in May 2016 Mr. Bédard addressed the Seoul International Forum on Trade Remedies, which was attended by representatives from the trade remedy authorities of the Republic of Korea, the United States, the European Commission, Australia, the People's Republic of China, Mexico, and the World Trade Organization (WTO), among others. He also participated in a meeting of the heads of trade remedy investigative authorities held in Seoul concurrently with the Forum on Trade Remedies. Members of the Tribunal also attended the World Customs Law annual meeting in September 2016, a WTO-sponsored conference in October 2016, the 19th judicial conference of the United States Court of International Trade in November 2016, and the annual International Trade Update in Washington, D.C., in March 2017. In addition, the CITT Secretariat and Australia's Antidumping Commission initiated an exchange program for support staff.

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 five decisions of the Tribunal in 2016-2017 and none were overturned or remanded.

Decisions of the Federal Court of Appeal may be appealed to the Supreme Court of Canada. On September 29, 2016, by an 8 to 1 margin the Supreme Court upheld a decision of the Tribunal concerning the tariff classification of hockey gloves.

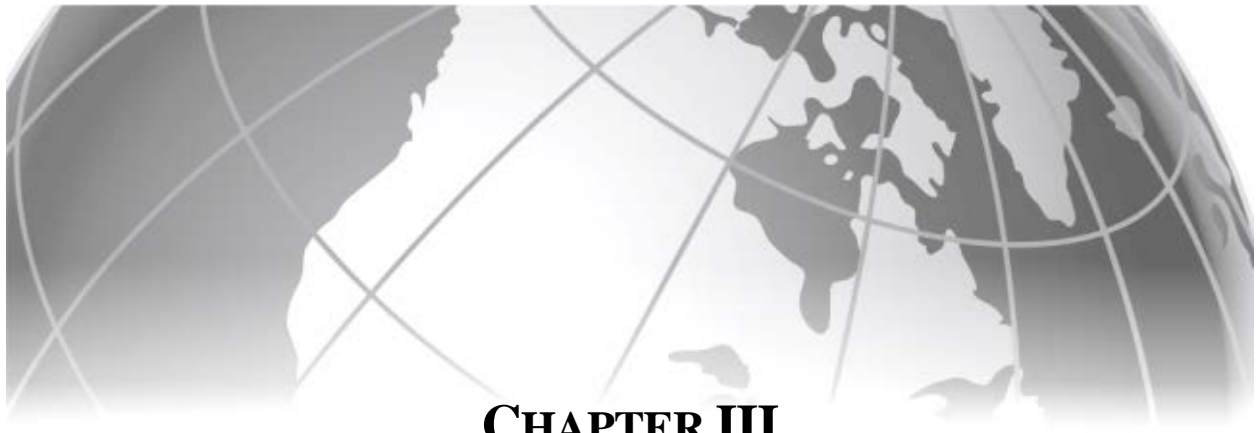
Judicial Review by NAFTA Binational Panel

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*. A binational panel was requested by a United States drywall exporter in February 2017, the first request in several years. The request was outstanding at fiscal year-end.

WTO Dispute Resolution

World Trade Organization members 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, a WTO panel reviewed a determination of the Tribunal for the first time. The panel found that part of the Tribunal's determination in relation to certain imports from Chinese Taipei, stemming from how Canada's international obligations had been implemented through *SIMA*, was not fully compliant with the WTO Agreement. Canada did not appeal.



CHAPTER III

TRADE REMEDY INJURY INQUIRIES

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 preliminary 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.

Preliminary Injury Inquiry Activities

	PI-2015-003	PI-2016-001-	PI-2016-002	PI-2016-003	PI-2016-004
Product	Large line pipe	Gypsum board	Concrete reinforcing bar	Certain fabricated industrial steel components	Silicon metal
Type of case/country	Dumping and subsidizing/China and Japan	Dumping/United States	Dumping/Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain	Dumping and subsidizing/China, Korea, Spain, United Arab Emirates and United Kingdom	Dumping/Brazil, Kazakhstan, Laos, Malaysia, Norway, Russia and Thailand Subsidizing/Brazil, Kazakhstan, Malaysia and Norway
Date of determination	May 24, 2016	August 5, 2016	October 19, 2016	November 10, 2016	In progress
Determination	Reasonable indication of injury or threat of injury	Reasonable indication of injury or threat of injury	Reasonable indication of injury or threat of injury	Reasonable indication of injury or threat of injury	
Participants	12	10	11	12	
Pages of official record	9,585	1,700	2,000	5,400	

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 four 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. Questionnaires are sent to Canadian producers, importers, purchasers, foreign producers and exporters. Primarily on the basis of questionnaire responses, an investigation report is prepared, which is put on the case record and 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 (SIMR)* 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 of injury or retardation or threat of injury.

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-2016-001	NQ-2016-002	NQ-2016-003	NQ-2016-004
Product	Large line pipe	Gypsum board	Concrete reinforcing rebar	Certain fabricated industrial steel components
Type of case/country	Dumping and subsidizing/China and Japan	Dumping/United States	Dumping/Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain	Dumping and subsidizing/China, Korea, Spain and United Kingdom
Date of finding	October 20, 2016	January 4, 2017	In progress	In progress
Finding	Injury	Injury		
Questionnaires sent	97	61		
Questionnaires received	66	39		
Requests for exclusions	67	2		
Requests for exclusions granted	4	0		
Participants	21	25		
Pages of official record	21,150	21,250		
Public hearing days	9	8		
Witnesses	39	37		

Final Injury Inquiries Completed in the Fiscal Year

As illustrated in the above table, the Tribunal completed two final injury inquiries in the fiscal year. The completed inquiries concerned welded large diameter carbon and alloy steel line pipe and gypsum board. The following summaries were prepared for general information purposes only.

NQ-2016-001—Welded Large Diameter Carbon and Alloy Steel Line Pipe

This inquiry concerned the dumping of welded large diameter carbon and alloy steel line pipe (LDLP) originating in or exported from the People's Republic of China (China) and Japan, and the subsidizing of LDLP originating in or exported from China (the subject goods).

The Tribunal sent requests to complete questionnaires to one domestic producer, EVRAZ Inc. NA Canada and Canadian National Steel Corporation (EVRAZ), 27 potential importers, 33 potential purchasers and 36 potential foreign producers of LDLP. Of the 97 requests sent, the Tribunal received replies from the one Canadian producer; 19 importers, five of which indicated they had not imported LDLP during the period of inquiry; 27 purchasers, five of which indicated they had not purchased LDLP during the period of inquiry; and seven foreign producers, three which indicated they did not produce LDLP during the period of inquiry. There were 21 participants to the inquiry.

The Tribunal held a hearing in Ottawa, Ontario, for eight days in September 2016; 39 witnesses appeared before the Tribunal. The official record contained 21,150 pages.

On October 20, 2016, the Tribunal issued its finding that the dumping and/or subsidizing of the subject goods caused injury to the domestic industry. Between mid-2014 and 2015, especially, the subject goods entered the domestic market at high volumes in both absolute and relative terms, and at prices which had significant negative price effects. The subject goods caused EVRAZ to experience lost sales and market share, reduced production and declining gross margins. These developments prevented EVRAZ from operating its facility in Camrose, Alberta, and resulted in layoffs of employees at its Regina, Saskatchewan, facilities. The Tribunal found that, absent the injurious effects of the subject goods, EVRAZ would have performed better during the period of inquiry.

The Tribunal received a total of 36 requests to exclude products from its finding and granted four exclusions.

NQ-2016-002—Gypsum Board

This inquiry concerned the dumping of certain gypsum board originating in or exported from the United States of America, imported into Canada for use or consumption in the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, as well as the Yukon and Northwest Territories (the subject goods).

Following a reference from His Excellency the Governor General in Council, the Tribunal also had to determine, in Reference No. GC-2016-001, whether the imposition of provisional duties, or duties, applicable to the subject goods, was contrary to Canada's economic, trade or commercial interests, and specifically whether such an imposition had or would have had the effect of substantially reducing competition in those markets, or causing significant harm to consumers of those goods or to businesses who use them. The Tribunal combined the two inquiries to expedite the process. The Tribunal's recommendations in GC-2016-001 are discussed separately under the "Economic and Tariff Inquiries" section of this report. Parties who were participants in Inquiry No. NQ-2016-002 were automatically considered to be parties to Reference No. GC-2016-001. Twenty-five parties were participants to both inquiries. One hundred and eight other parties filed notices of participation with the Tribunal in Reference No. GC-2016-001. The Tribunal sent requests to complete questionnaires to five Canadian producers and two potential importers of gypsum board. Only one reply, from CertainTeed Gypsum Canada Inc. (CGC), was considered to be from a "domestic producer", as it was the sole producer of gypsum board in Western Canada. The remaining four replies were from producers considered to be "Eastern Producers" and therefore not part of the domestic industry for the purposes of this inquiry. The Tribunal also received three

replies from importers of gypsum board in Western Canada. The Tribunal also sent requests to complete questionnaires to 32 potential purchasers and 25 potential foreign producers of gypsum board. The Tribunal received 22 replies from purchasers, with one indicating that it had not purchased gypsum board during the period of inquiry, and nine replies from foreign producers, three of which indicated that they had not produced gypsum board during the period of inquiry and two of which were incomplete.

The Tribunal held a hearing in Edmonton, Alberta, from November 28, 2016, to December 8, 2016, where participants testified to matters relevant to both Inquiry No. NQ-2016-002 and Reference No. GC-2016-001; 37 witnesses appeared before the Tribunal. The official record contained 21,250 pages.

The Tribunal found that the gypsum board market is price driven. It concluded that the subject goods competed head-to-head with domestically produced goods using lower prices, took sales as a result and limited any price increases in the pricing of gypsum board as reflected in overall market prices during the period of inquiry. In addition to price undercutting, the Tribunal found that the subject goods significantly suppressed the price of like goods; however, it found that the evidence did not demonstrate that price depression occurred. The Tribunal found that the dumping of the subject goods did, in and of itself, cause material injury to the domestic market. This injury included losses in sales and market share, reduced profitability, and a decrease in capacity utilization. While the parties opposed alleged that factors other than dumping caused injury to the domestic market, such as the depreciation of the Canadian dollar during the period of inquiry, poor customer relations and a lack of exports by the domestic producer to the U.S. market, the Tribunal was not persuaded that these negated its conclusions on injury.

In its finding issued on January 4, 2017, the Tribunal found that the dumping of the subject goods caused injury to the domestic industry. On the same date, the Tribunal also reported to the Governor in Council its findings and recommendations in connection with Inquiry No. GC-2016-001.²

The Tribunal received requests for two product exclusions and denied both requests, having concluded that the domestic industry does produce substitutable products and, hence, imports of the goods in question would cause injury to the like goods.

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

There were two final injury inquiries in progress at the end of the fiscal year concerning concrete reinforcing bar and certain fabricated industrial steel components.

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 did not conduct any public interest inquiry during the fiscal year.

2. Please see Chapter VI for details.

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	Request for Interim Review No. RD-2016-001	Request for Interim Review No. RD-2016-002	Request for Interim Review No. RD-2016-003
Product	Liquid dielectric transformers	Certain carbon steel fasteners	Hot-rolled carbon steel plate	Certain fasteners
Type of case/country	Dumping/Korea	Dumping and subsidizing/China and Chinese Taipei	Dumping and subsidizing/Ukraine	Dumping and subsidizing/China and Chinese Taipei
Date of order or of withdrawal	May 31, 2016	February 15, 2017	In abeyance	In progress
Order	Continues finding without amendments	Continues finding with amendments		
Participants	4	11		
Pages of official record	2,695	170		

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

As illustrated in the table above, the Tribunal completed two interim reviews during the fiscal year, concerning liquid dielectric transformers and certain carbon steel fasteners. There was one interim review in progress at the end of the fiscal year concerning certain fasteners.

RD-2013-003—Liquid Dielectric Transformers

This interim review concerned liquid dielectric transformers originating in or exported from the Republic of Korea. The Tribunal initiated this interim review to determine if its finding in Inquiry No. NQ-2012-001 was impacted by a revised final determination of dumping issued by the President of the CBSA on March 6, 2014.

The revised final determination stemmed from a decision of the Federal Court of Appeal made on December 6, 2016, which set aside the original final determination and referred the matter back to the CBSA for further consideration, and resulted in reduced country- and export-specific margins of dumping compared to the CBSA's original finding. The Tribunal initiated this interim review to determine if its finding of injury should be continued, with or without amendment, or rescinded in light of the new facts, i.e. the new margins of dumping. Although the Tribunal initiated its interim review on March 14, 2014, it was held in abeyance while the CBSA's revised final determination was subject to two applications for judicial review. The Tribunal resumed its interim review on September 25, 2015.

There were 4 participants to the interim review. The official record contained 2,695 pages.

In its decision issued on May 31, 2016, the Tribunal found that there was nothing in the CBSA's revised final determination that warranted a departure from its finding of price undercutting, price depression or price suppression in Inquiry No. NQ-2012-001. It also found that the revised margins of dumping, while reduced, remained well above the 2 to 3 percent price sensitivity threshold cited by purchasers and accepted by the Tribunal in the inquiry. The Tribunal noted that 100 percent of the subject goods imported into Canada were dumped and that even the reduced margins of dumping were substantial enough to have contributed to the domestic industry's declining performance. In sum, the Tribunal found that there was no reason to depart from its original finding that the dumping of the subject goods caused material injury to the domestic industry.

RD-2016-001—Certain Carbon Steel Fasteners

This interim review concerned certain carbon steel fasteners originating in or exported from the People's Republic of China and Chinese Taipei. The Tribunal initiated this interim review following a request from Canimex Inc. (Canimex), an importer, to exclude certain shoulder bolts from the Tribunal's order made on January 5, 2015, in Expiry Review No. RR-2014-001, on the basis that the goods were no longer produced by the domestic industry and that granting the exclusion would not injure the domestic industry.

There were 11 participants to the interim review. The official record contained 170 pages.

The Tribunal found that the domestic industry did not produce shoulder bolts and that amending its order to exclude such goods would not result in injury to the domestic industry.

The Tribunal denied Caminex's request that the exclusion be granted retroactively to the date that anti-dumping duties were imposed, on the basis that Canimex was essentially asking the Tribunal to put it in the same position as if it had successfully challenged the CBSA's determination that shoulder bolts are subject goods through an appeal pursuant to section 61 of *SIMA*. The Tribunal found that Canimex's decision to request an exclusion from the order in Expiry Review No. RR-2014-001, instead of contesting the CBSA's subjectivity determination, essentially demonstrated its tacit acceptance that shoulder bolts are subject goods. Since it was unclear from the evidence on the record precisely since when there had been no domestic production of shoulder bolts, the Tribunal granted the request retroactively to May 16, 2016, which was the date on which the Tribunal received the last document from Canimex to support its request.

On February 15, 2017, The Tribunal amended its order in Expiry Review No. RR-2014-001 to exclude, effective May 16, 2006, the following goods: shoulder bolts made of steel, grade 5, and zinc-plated, with a hexagonal head, an unthreaded cylindrical shoulder section ranging from 1/4 inch to 3/4 inch in diameter, and a threaded section that is smaller in diameter than the shoulder ranging from 3/8 inch to 7/8 inch in length and between 10-24 and 5/8-11 in common thread sizes.

Expiries

Subsection 76.03(1) of *SIMA* provides that a finding or order expires after five years, unless an expiry review has been initiated. Prior to an amendment that took effect during the year, the Tribunal was obliged to publish, not later than 10 months before the expiry date of the order or finding, a notice of expiry in the *Canada Gazette*. Now the Tribunal publishes the notice not later than 2 months before the expiry date. 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-2016-001	LE-2016-002
Product	Pup joints	Stainless steel sinks
Type of case/country	Dumping and subsidizing/ China	Dumping and subsidizing/China
Date of order or notice of expiry review	August 2, 2016	In progress
Decision	Expiry review initiated	
Participants	3	
Pages of official record	395	

As illustrated in the above table, the Tribunal decided to commence one expiry review in the fiscal year.

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. However, the Tribunal revised its *Expiry Review Guidelines* during the year, in consultation with stakeholders, to indicate that the Tribunal will explore the possibility of holding a file hearing instead of an oral hearing in appropriate expiry reviews. A file hearing may simplify the proceedings and reduce the parties' costs. Whereas final injury inquiries are invariably contested, expiry reviews are sometimes unopposed.

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-2015-001	RR-2015-002	RR-2015-003	RR-2016-001
Product	Steel grating	Flat hot-rolled carbon and alloy steel sheet and strip	Copper pipe fittings	Pup joints
Type of case/country	Dumping and subsidizing/China	Dumping and subsidizing/Brazil, China, Chinese Taipei, India and Ukraine	Dumping and subsidizing/China, Korea and the United States	Dumping and Subsidizing/China
Date of order	April 18, 2016	August 12, 2016	November 28, 2016	In progress
Order	Order continued	Order continued (rescinded for Chinese Taipei and India)	Order continued with amendments	
Questionnaires sent¹	228	130	169	
Questionnaires received²	95	37	53	
Participants	1	7	2	
Pages of official record	5,900	22,310	9,320	
Public hearing days	2	3	2	
Witnesses	5	15	2	

1. Expiry review questionnaires are sent to a comprehensive list of known domestic producers and to all potential importers and exporters, and 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, concerning steel grating, flat hot-rolled sheet and strip and copper pipe fittings, and there was one expiry review in progress at the end of the fiscal year.

RR-2015-001—Steel Grating

This expiry review concerned the dumping and subsidizing of carbon steel bar grating and alloy steel bar grating consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated (steel grating), originating in or exported from the People's Republic of China (the subject goods).

The Tribunal sent requests to complete questionnaires to two domestic producers (Fisher & Ludlow and Borden Metal Products (Canada) Ltd.), 145 potential importers and 62 potential foreign producers of steel grating. The Tribunal received replies from both domestic producers. It also received seven replies from importers of steel grating and 85 replies from importers indicating that they did not import steel grating during the period of review. The Tribunal received one reply from a foreign producer of steel grating.

The Tribunal held a two-day hearing on March 7 and March 8, 2016, in Ottawa, Ontario. Fisher & Ludlow provided three witnesses and the Tribunal called two witnesses. No other parties participated in the expiry review. The Tribunal did not receive any requests for product exclusions. The official record contained 5,900 pages.

The Tribunal was of the view that, if the finding was rescinded, there would be a significant increase in the volume of imports of the subject goods. The Tribunal also found that the likely outcome of a rescission was that the domestic industry would face significant price undercutting and would either need to significantly lower the price of the like goods (price depression) or risk losing sales and market share. The Tribunal stated that the subject goods would need to undercut the price of the like goods to gain sales and

that this market reality would likely have severe negative consequences for the domestic industry, whether that negative impact took the form of lost sales and downward pressure on production and employment, or reduced revenue and margins. The Tribunal found that, either way, the resultant impacts on profits, cash flow, etc., would be material. Consequently, on April 18, 2016, the Tribunal continued its finding, having determined that the impact of the significant volumes and low prices of the subject goods if the finding were rescinded would be materially injurious to the domestic industry.

RR-2015-002—Flat Hot-rolled Steel Sheet and Strip

This expiry review concerned the dumping of flat hot-rolled carbon and alloy steel sheet and strip (hot-rolled steel sheet) originating in or exported from Brazil, The People's Republic of China (China), Chinese Taipei, India and Ukraine, and the subsidizing of hot-rolled steel sheet originating in or exported from India (the subject goods).

The CBSA determined that the expiry of the Tribunal's orders was unlikely to result in the continuation or resumption of dumping of the subject goods from Chinese Taipei and India, but was likely to result in the resumption or continuation of dumping of the subject goods from Brazil, China and Ukraine, and subsidizing of the subject goods from India. As such, the Tribunal rescinded its order concerning Chinese Taipei.

In this expiry review, the Tribunal was of the view that assessing the effects of subsidized imports from India cumulatively with the effects of dumped imports from the other subject countries would not be appropriate because India was subject only to a subsidizing determination, whereas the other three countries were subject only to dumping investigations. It noted that this was analogous to the situation presented in the WTO's decision in *United States – Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India*, in which the Appellate Body found that cross-cumulating imports that were subject to a dumping investigation with those subject only to a subsidizing investigation constituted a violation of the *Subsidies Agreement*. Accordingly, the Tribunal conducted its injury analysis separately for India and cumulatively for China, Brazil and Ukraine (the cumulated countries).

The Tribunal sent requests to complete questionnaires to four potential domestic producers, 35 potential importers and 78 potential foreign producers of hot-rolled steel sheet. It received four replies from the domestic producers, 22 responses from importers, nine of which imported hot-rolled steel sheet during the period of review, and three foreign producers that produced hot-rolled steel sheet during the period of review. There were six participants to the review.

The Tribunal held a two-day hearing from June 27 to 29, 2016, in Ottawa, Ontario, where it heard from 15 witnesses. The four domestic mills provided witnesses and were represented by counsel who made arguments at the hearing. The Government of India's representative also made arguments. The Tribunal did not receive any requests for product exclusions. The official record contained 22,310 pages.

On August 12, 2016, the Tribunal determined that, if the order was rescinded with respect to the cumulated countries (China, Brazil and Ukraine), the likely volumes of hot-rolled steel sheet that would be exported to Canada will be significant in relation to the size of the Canadian market. The Tribunal considered it likely that hot-rolled steel sheet from the cumulated countries will be sold at prices that will significantly undercut the Canadian domestic price, resulting in significant price depression. In light of the above, the Tribunal found that the resumption of significant volumes of imports of the dumped subject goods at low prices from the cumulated countries will likely cause material injury to the domestic industry in terms of a reduction in market share, production and capacity utilization, decreased net income and an inability to make necessary investments.

With respect to India, the Tribunal found that producers in India would likely resume exporting significant volumes of hot-rolled steel sheet to Canada if the Tribunal's order were rescinded. The Tribunal was of the view that, despite the evidence of a relatively high domestic selling price in India, subject goods would likely enter the Canadian market at prices that significantly undercut the Canadian domestic price, resulting in significant price depression. The Tribunal found that the resumption of imports of the subsidized subject goods would, in and of itself, likely cause material injury to the domestic industry in terms of a reduction in market share, production and capacity utilization, decreased net income and an inability to make necessary investments.

RR-2015-003—Copper Pipe Fittings

This expiry review concerned the dumping of copper pipe fittings originating in or exported from the United States of America, The Republic of Korea and the People's Republic of China and the subsidizing of copper pipe fittings originating in or exported from the People's Republic of China (the subject goods).

The Tribunal sent requests to complete questionnaires to Cello Products Inc. (Cello), the only remaining domestic producer, Bow Plumbing Group Inc., a producer that ceased operations in 2013, 39 potential importers and 119 potential foreign producers of copper pipe fittings. The Tribunal received a reply to the producer's questionnaire from Cello. The Tribunal also received 14 replies from importers of copper pipe fittings and 18 replies from firms indicating that they did not import copper pipe fittings during the period of review. The Tribunal received 15 replies from potential foreign producers, of which two had produced copper pipe fittings during the period of review. There were four participants to the review. The official record contained 9,320 pages.

The Tribunal held a two-day public hearing from October 11 to 12, 2016, in Ottawa, Ontario, where it heard from two witnesses from Cello.

The Tribunal received two product exclusion requests from Mueller Industries Inc. (Mueller). Cello consented to one exclusion request in its entirety and consented in part to a second one. The Tribunal excluded copper-iron high-pressure alloy fittings manufactured with UNS C19400 grade copper alloy and with safe working pressure up to 1,740 psi from its orders, as the evidence indicated that doing so would not injure the domestic industry. Mueller's second exclusion request related to copper pipe fittings included in the product definition and produced by Cello due to the fact that they can only be made as cast fittings, rather than wrought fittings. The parties filed an agreed list of copper pipe fittings corresponding to this description, and Cello consented to the revised request. The evidence confirmed that these particular products could only be made by casting and that Cello did not produce a substitutable wrought alternative. Therefore, the Tribunal granted the exclusion.

On November 28, 2016, the Tribunal found that, if the orders were rescinded, there would likely be a significant increase in the volume of imports of the subject goods in absolute terms, as well as relative to domestic production and domestic consumption of like goods. The Tribunal found that that the domestic industry would likely face significant price undercutting, as the subject goods attempt to regain market share lost to the imports from non-subject countries. The domestic industry would either be forced to significantly lower the price of the like goods, leading to price depression, or risk losing further sales and market share. Cello contended that, and the Tribunal agreed, if the orders were rescinded, the impact of the subject goods could be so severe that Cello would no longer be able to continue to manufacture like goods in Canada. In support of this, Cello noted that, despite having arguably the largest collection of cast patterns and tooling in the world, the price of imported cast fittings or wrought equivalents have made it financially impossible to keep operational its foundry for the production of cast fittings. As such, the Tribunal found that the

rescission of the orders would have negative consequences on Cello’s performance, including its production, sales, financial outcomes, employment and capacity utilization, likely resulting in material injury to the domestic industry.

Expiry Reviews in Progress at the End of the Fiscal Year

There was one expiry review in progress at the end of the fiscal year concerning pup joints. Notably, the Tribunal proceeded without an oral hearing in this case for the first time since the *Expiry Review Guidelines* were revised to contemplate this possibility.

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-2014-003	Oil country tubular goods	China	A-177-15 Application dismissed (October 25, 2016)
NQ-2014-002	Oil country tubular goods	Chinese Taipei, India, Indonesia, Philippines, Korea, Thailand and Turkey	A-226-15 Discontinued (May 2, 2016)
NQ-2015-001	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	India and Russia	A-46-16 In progress
NQ-2016-002	Gypsum board	United States	CDA-USA-2017-1904-01 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. The Federal Court of Appeal dismissed the application for review of the Tribunal’s order in Expiry Review No. RR-2014-003 on October 25, 2016.

WTO Dispute Resolutions

During the fiscal year, there was 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. The final report was issued on December 21, 2016.

In this dispute, Chinese Taipei challenged Canada’s treatment of imports from Chinese Taipei exporters with final *de minimis* margins of dumping as “dumped imports” within the meaning of several articles of the *Anti-Dumping Agreement* for the purpose of the determinations of injury and causation.

The panel upheld Chinese Taipei’s claim. It found that as a result of the requirement to immediately terminate an investigation with respect to exporters with final *de minimis* margins of dumping, imports from such exporters should not be treated as “dumped” in the analysis and final determinations of injury and causation. Chinese Taipei also brought challenges against certain provisions of Canada’s underlying anti-dumping legislation, *SIMA* and *SIMR*. These “as such” claims concern the treatment of exporters with *de minimis* margins of dumping and mirror the corresponding “as applied” claims relating to the above investigation and inquiry. In particular, the panel rejected Canada’s contention that discretion existed under *SIMA* to immediately terminate investigations in respect of exporters with *de minimis* margins of dumping, as required by Article 5.8 of the *Anti-Dumping Agreement*. As a result, Chinese Taipei’s claims were upheld to the extent that they relate to the treatment of exporters with final *de minimis* margins of dumping, but rejected to the extent that they relate to the treatment of exporters with preliminary *de minimis* margins of dumping.

On January 26, 2017, Canada and Chinese Taipei informed the DSB that they had agreed that the reasonable period of time to implement the DSB’s recommendations and rulings would be 14 months. Accordingly, the reasonable period of time is set to expire on March 25, 2018. At the DSB meeting on February 20, 2017, Canada informed the DSB that it intended to implement the DSB’s recommendations and rulings in this dispute within the reasonable period of time.

***SIMA* Findings and Orders in Force**

As of December 31, 2016, there were 29 *SIMA* findings and orders in force.

Summary of Findings and Orders in Force as of March 31, 2017

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	

Inquiry No. or Expiry Review No.	Date of Decision	Product	Type of Case/Country	Related Decision No. and Date
NQ-2014-003	July 3, 2015	Photovoltaic modules and laminates	Dumping and subsidizing/China	
NQ-2015-002	March 29, 2016	Carbon and alloy steel line pipe	Dumping and subsidizing/China	
NQ-2016-001	October 20, 2016	Welded large diameter carbon and alloy steel line pipe	Dumping/China and Japan Subsidizing/China	
NQ-2016-002	January 7, 2017	Gypsum board	Dumping/United States	
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)
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)

Inquiry No. or Expiry Review No.	Date of Decision	Product	Type of Case/Country	Related Decision No. and Date
RR-2015-001	April 18, 2016	Steel grating	Dumping and subsidizing/China	NQ-2010-002 (April 19, 2011)
RR-2015-002	August 12, 2016	Flat hot-rolled carbon and alloy steel sheet and strip	Dumping/Brazil, China and Ukraine Subsidizing/India	RR-2010-001 (August 15, 2011) RR-2005-002 (August 16, 2006) NQ-2001-001 (August 17, 2001)
RR-2015-003	November 28, 2016	Copper Pipe Fittings	Dumping/United States, Korea and China Subsidizing/China	RR-2011-001 (February 17, 2012) NQ-2006-002 (February 19, 2007)

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



CHAPTER IV

PROCUREMENT INQUIRIES

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

	2015-2016	2016-2017
Number of procurement complaints received		
Carried over from previous fiscal year	13	8
Received in fiscal year	70	70
Total	83	78
Disposition—Complaints accepted for inquiry		
Dismissed	6	-
Not valid	14	7
Valid or valid in part	3	16
Ceased	2	6
Withdrawn/abandoned	2	3
Subtotal	27	32
Disposition—Complaints not accepted for inquiry		
Lack of jurisdiction/not a potential supplier	6	3
Late filing	10	8
Not a designated contract/no reasonable indication of a breach/premature	30	22
Withdrawn/abandoned	2	4
Subtotal	48	37
Outstanding at end of fiscal year	8	9
Decisions to initiate	24	32
Remanded cases	-	-

Summary of Selected Determinations

During the fiscal year, the Tribunal issued 65 decisions on whether to accept complaints for inquiry and 29 final decisions on complaints that were accepted for inquiry, for a total of 94 decisions. Nine cases were still in progress at the end of the fiscal year, two of which was still under consideration for being accepted for inquiry.

Of the complaints investigated by the Tribunal in carrying out its procurement inquiry 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-2015-070—M.D. Charlton Co. Ltd. and PR-2016-043—Hewlett-Packard (Canada) Co.

M.D. Charlton Co. Ltd. (M.D. Charlton) filed a complaint with the Tribunal with regard to a Request for Standing Offer (RFSO) by the Department of Public Works and Government Services

(PWGSC) on behalf of the Royal Canadian Mounted Police (RCMP) for the provision of night vision binoculars.

M.D. Charlton argued that the national security exception (NSE) was improperly invoked to remove the procurement process from the disciplines of the trade agreements. M.D. Charlton also alleged that the solicitation requirements favoured a specific supplier.

PWGSC filed a motion to dismiss submitting that, as the procurement at issue was subject to an NSE, the complaint does not concern a “designated contract”, a jurisdictional requirement for the Tribunal.

As it had stated previously, the Tribunal reiterated that the trade agreements leave the identification of the national security interest to the sole discretion of the responsible government institution; however, the government institution may exclude the disciplines only to the extent necessary for the protection of the national security interest identified.

On that basis, the Tribunal found that PWGSC had improperly invoked the NSE to exclude all the disciplines of the trade agreements even though the only concern the RCMP had raised was that the technical specifications of the binoculars not be disclosed.

On the merits, the Tribunal found the complaint valid because the technical specifications in the Request for Standing Offer required bidders to provide the products of either of two specific suppliers; yet, some of the mandatory requirements could only be met by one supplier, and no provision allowed suppliers to propose equivalent products. Further, PWGSC offered no justification for these specifications, and some documentary evidence supported the claim that the RCMP had a preferred supplier.

The Request for Proposal (RFP) at issue in Hewlett-Packard (Canada) Co. (File No. PR-2016-043) was issued by Shared Services Canada (SSC) for the provision of a supercomputer and also concerned a national security exception. Hewlett-Packard alleged that an improper evaluation had occurred. SSC filed a motion to dismiss the complaint for almost identical reasons as those that had been in issue in File No. PR-2015-070 (*M.D. Charlton Co. Ltd.*), arguing similarly that the NSE should force the Tribunal to cease its inquiry. The Tribunal dismissed SSC’s motion, holding that SSC had failed to discharge, as required by the *Agreement on Internal Trade*, the burden to prove why access to the Tribunal’s bid challenge mechanism should be denied on grounds of national security or why SSC should not be held accountable for respecting its published tender documents. Hewlett-Packard’s grounds of complaint were, however, dismissed.

PR-2016-001—The Access Information Agency Inc.

In this procurement inquiry, The Access Information Agency Inc. (AIA) filed a complaint with regard to a request for availability (RFA) pursuant to a standing offer for temporary help relating to access to information and privacy. AIA alleged that its bid was not evaluated according to the criteria of the RFA, that Global Affairs Canada (GAC) failed to provide AIA with explanations regarding the relative advantages of the winning bid, and that GAC was not entitled to cancel the RFA.

In response to the complaint, GAC filed a motion requesting that the Tribunal dismiss the complaint for lack of jurisdiction. According to GAC, the complaint did not relate to a “designated contract” because GAC cancelled the solicitation process before the Tribunal began its inquiry.

In reviewing the motion, the Tribunal stated that the expression “designated contract” is defined in section 30.1 of the *CITT Act* and includes both contracts which have been or are proposed to be awarded. The Tribunal found that its jurisdiction crystallized at the moment the contract was awarded, and that the

subsequent cancellation of the contract did not extinguish the Tribunal's jurisdiction. Moreover, since the purpose of the regulatory regime under the *CITT Act* is to ensure that the procurement process is fair, competitive, efficient and conducted with integrity, the cancellation of the process falls within this mandate.

In reaching this conclusion, the Tribunal clarified that it will not necessarily commence or continue an inquiry in every case where the solicitation was cancelled. Rather, the Tribunal will still exercise its discretion and determine if the cancellation renders the complaint frivolous or vexatious.

On the merits of the complaint, the Tribunal found that GAC breached the *AIT* by evaluating AIA's proposal in a way that did not comply with the criteria set out in the RFA. However, the Tribunal also found that, unlike other trade agreements, the *AIT* does not contain any obligation for the government institution to provide information on the relative advantages of the winning bid. The Tribunal added that the practice of providing debriefings is nevertheless encouraged in order to enhance transparency. The Tribunal also found that, because the *AIT* does not prohibit the cancellation of a contract, GAC was therefore entitled to do so.

AIA and GAC each filed an application for judicial review of this decision to the Federal Court of Appeal, which is currently pending.

PR-2016-018—Lincoln Landscaping Inc.

Lincoln Landscaping Inc. (Lincoln) filed a complaint with regard to an Invitation to Tender (ITT) for the provision of snow and ice control, and grass cutting and landscape maintenance services.

Lincoln alleged that PWGSC breached the provisions of *NAFTA* by improperly entering into a contract for the services set out in the ITT with a third party who had not participated in the competitive process, by disclosing Lincoln's confidential pricing information to a third-party competitor, and by improperly cancelling the solicitation.

PWGSC submitted a motion requesting that the complaint be dismissed on the grounds that the cancellation of the solicitation had vacated the Tribunal's jurisdiction. In the alternative, PWGSC argued that the complaint was rendered trivial given the cancellation.

The Tribunal rejected the first argument, noting that a designated contract existed when the Tribunal commenced the inquiry. The Tribunal found that its jurisdiction is not nullified by the subsequent cancellation of the solicitation. Nor did the cancellation render the complaint trivial. The Tribunal noted that none of the breaches alleged by Lincoln were remedied by the cancellation of the process. Indeed, whether or not PWGSC acted properly in cancelling the contract was a central question to be determined.

With respect to the first ground of complaint, the Tribunal found that PWGSC breached the provisions of *NAFTA* by entering into contract with a third party without issuing a competitive bidding process. Although PWGSC argued that the work was done via call-ups under a pre-existing Standing Offer (SO), the Tribunal determined that the SO in question was for entirely different services than those required under the ITT.

The Tribunal also concluded that PWGSC breached the provisions of *NAFTA* by improperly disclosing Lincoln's confidential pricing information to a third-party competitor.

In regards to the final ground of complaint, the Tribunal referred to Article 1015(4)(c) of *NAFTA*, which requires that an entity shall award a contract unless it decides in the public interest not to do so. The Tribunal did not accept PWGSC's argument that it was in the public interest to not award the contract because Lincoln's price was "excessive". The Tribunal found that not only did the ITT not contain any

maximum price provision, but the prices PWGSC paid to the third-party entity it contracted to do the work were actually higher than those proposed by Lincoln. Moreover, PWGSC refused to disclose the cost estimate to Lincoln despite the latter specifically asking for it. The Tribunal held that these actions did not support PWGSC's contention that the cost estimate was clearly intended to be an integral part of the evaluation process.

Given that Lincoln fully complied with the requirements of the ITT, and that PWGSC had not established a valid public interest rationale for cancelling the contract, the Tribunal found that PWGSC breached *NAFTA* by cancelling the solicitation and refusing to award the contract to Lincoln.

PWGSC initially submitted an application for judicial review of the Tribunal's determination, but that application was subsequently discontinued.

PR-2016-031—Medi+Sure Canada Inc.

In this procurement inquiry, Medi+Sure Canada Inc. (Medi+Sure) filed a complaint with regard to a solicitation for the provision of diabetic test strips and glucometers.

The Request for Proposal (RFP) stated that the resulting contract would be awarded to the bidder who submitted the lowest-priced, compliant proposal. The contract was initially awarded to Felix Technology Inc. (Felix) as the lowest-priced compliant bidder; however, PWGSC and Felix terminated the contract by mutual consent. Medi+Sure argued that Felix's proposal should not have been deemed compliant. While PWGSC proposed to cancel and reissue the solicitation, Medi+Sure argued that, as the remaining lowest-priced compliant bidder, it should be awarded the contract.

PWGSC filed a motion to dismiss the complaint on the grounds that the cancellation of the contract with Felix meant that there was no "designated contract", and that the Tribunal, therefore, did not have jurisdiction. In addition, PWGSC contended that it could not award the contract to Medi+Sure, since the RFP contained a 90-day expiration period on bids.

In rejecting PWGSC's motion, the Tribunal noted that notwithstanding the cancellation of the contract with Felix, the grounds of the complaint remained relevant. The cancellation of the solicitation did not nullify Medi+Sure's contention that it should have been awarded the contract from the start, since Felix's bid was not compliant with the requirements of the RFP. In addition, Article 1015(4)(c) of *NAFTA* required that a contract be awarded unless there was a public interest exception. PWGSC had not cited any public interest exception, and therefore the obligation to award the contract remained.

The Tribunal also found that the complaint was not rendered trivial by the expiration of the 90-day open-offer period for bid prices required by the RFP. The Tribunal held that the clause does not prevent PWGSC from remedying a breach of a trade agreement, even when it has already made an award within the bidding period.

On the substantive grounds of the complaint, the Tribunal found that Felix's bid had not been evaluated in accordance with the criteria set out in the RFP. The Tribunal held that, but for this error, Medi+Sure would have been awarded the contract, as it was the lowest-priced, fully compliant bid. While cancelling the contract with Felix and relaunching the solicitation ameliorated the breach somewhat, a retendering would impose delays and expenses on Medi+Sure. Although Medi+Sure's pricing had expired under the RFP and Medi+Sure was not contractually obligated to offer the product at the prices listed in its bid, the Tribunal found that the prejudice Medi+Sure suffered would be fully ameliorated if Medi+Sure were awarded the contract at the price listed in its bid.

PWGSC initially filed an application for judicial review of this case, but that application was subsequently discontinued.

PR-2016-035—Agence Gravel Inc.

In this procurement inquiry, Agence Gravel Inc. (Agence Gravel) filed a complaint with regard to an RFSO for the provision of firearm suppressors.

Prior to the complaint being brought, PWGSC announced that it had cancelled the solicitation prior to contract award because the bid validity period had expired without the evaluation being completed. Agence Gravel argued that this cancellation was contrary to the provisions of the solicitation and was a breach of PWGSC's obligations under the trade agreements.

PWGSC filed a motion asking the Tribunal to end the inquiry as the cancellation of the solicitation meant that there was no "designated contract", and that the Tribunal, therefore, did not have jurisdiction.

The Tribunal denied PWGSC's motion, noting that the term "designated contract" as defined in section 30.1 of the *CITT Act* included both a contract that had been awarded and one that is proposed to be awarded. Given that the cancellation of a solicitation is an integral aspect of the procurement process, and that it is precisely the cancellation of the process which was at issue, the Tribunal found that its mandate under the *CITT Act* required it to determine whether the process was conducted in accordance with the relevant trade agreements.

With respect to PWGSC's rationale for cancelling the solicitation, the Tribunal found that PWGSC allowed the bid validity period to expire through a series of errors and delays of its own making. The Tribunal stated that there is a reasonable expectation that the government institution would consider bids on their merits and would not allow them to expire through its own lack of reasonable diligence. The evidence before the Tribunal demonstrated that PWGSC did not show reasonable diligence in the management of the RFSO.

While the RFSO did contain a privilege clause which stated that PWGSC could cancel the solicitation at any time, the Tribunal stated that this must be read in the context of the RFSO and under the regime of the *AIT*, which requires fair and equal treatment of bidders. Moreover, the Tribunal noted that cases where the right to cancel a solicitation would be appropriate normally include situations in which unforeseen circumstances have arisen. The Tribunal found that the cancellation of the solicitation was not due to an unforeseen circumstance, but was the result of a lack of diligence on the part of PWGSC in its procedures.

The Tribunal found that by cancelling the solicitation, PWGSC had breached its obligations under the trade agreements. The Tribunal recommended that PWGSC complete the evaluation process and award the standing offer to the successful bidder.

PWGSC filed an application for judicial review, which is pending.

PR-2016-045—TPG Technology Consulting Ltd.

TPG Technology Consulting Ltd. (TPG) filed a complaint with the Tribunal regarding an RFP for engineering and technical support services issued by PWGSC in 2006, over ten years ago. In 2008, TPG had brought an action for damages at the Federal Court, which ultimately denied the claim. That decision was upheld by the Federal Court of Appeal. TPG claimed that because the Federal Court found that PWGSC had unfairly evaluated TPG's bid on 2 out of 217 criteria, TPG had established prejudice to the

integrity and efficiency of the procurement system and was entitled to monetary compensation, even though the courts found that TPG had not proven that, but for PWGSC's errors, it would have been the successful bidder on the RFP.

The Tribunal found the complaint untimely, as the facts in support of TPG's complaint became known to it either before it began its action in 2008 or, at the latest, during the course of the trial, which took place in 2014. The Tribunal also found that the complaint was *res judicata* because TPG had already received a final decision on the merits at the Federal Court of Appeal.

Disposition of Procurement Complaints

File No.	Complainant	Status/Decision
PR-2015-043	StenoTran Services Inc. and Atchison & Denman Court Reporting Services Ltd.	Decision issued on April 15, 2016 Complaint valid
PR-2015-047	Madsen Power Systems Inc.	Decision issued on April 29, 2016 Complaint not valid
PR-2015-051	Oshkosh Defence Canada Incorporated	Decision issued on May 20, 2016 Complaint valid in part
PR-2015-058	Jaura Entreprises	Decision issued on June 9, 2016 Complaint not valid
PR-2015-060	HDT Expeditionary Systems, Inc.	Decision issued on July 6, 2016 Complaint not valid
PR-2015-064	MasterBedroom Inc.	Decision issued on May 26, 2016 Complaint valid
PR-2015-067	Oshkosh Defence Canada Incorporated	Decision issued on May 20, 2016 Complaint valid in part
PR-2015-070	M.D. Charlton Co. Ltd.	Decision issued on August 10, 2016 Complaint valid
PR-2016-001	The Access Information Agency Inc.	Decision issued on August 19, 2016 Complaint valid in part
PR-2016-002	Promaxix Systems Inc.	Complaint abandoned on April 26, 2016
PR-2016-003	Francis H.V.A.C. Services Ltd.	Decision issued on September 2, 2016 Complaint not valid
PR-2016-004	Solutions Moerae Inc.	Decision issued on September 12, 2016 Complaint valid in part
PR-2016-005	Blue White Translation Ltd.	Inquiry ceased on July 21, 2016
PR-2016-006	TYR Tactical Canada, ULC	Decision made on May 13, 2016 Late filing
PR-2016-007	MD Charlton Co. Ltd.	Decision made on May 13, 2016 No reasonable indication of a breach
PR-2016-008	Jastram Technologies Ltd.	Decision made on May 24, 2016 Not a designated contract
PR-2016-009	HeartZap Services Inc.	Decision made on May 13, 2016 No reasonable indication of a breach
PR-2016-010	Cision Canada Inc.	Decision made on May 30, 2016 Not a designated contract
PR-2016-011	Futura Workwear Safety Tech. Inc.	Decision made on June 7, 2016 Late filing
PR-2016-012	Otec Solutions Inc.	Decision issued on October 5, 2016 Complaint not valid
PR-2016-013	Unisource Technology Inc.	Inquiry ceased on August 23, 2016
PR-2016-014	CAMEC Joint Venture	Decision made on October 7, 2016 Complaint valid in part

File No.	Complainant	Status/Decision
PR-2016-015	Telecore	Decision made on June 15, 2016 Not a designated contract
PR-2016-016	The Access Information Agency Inc.	Complaint withdrawn on June 30, 2016
PR-2016-017	Vurtur Communication Group	Complaint abandoned on July 18, 2016
PR-2016-018	Lincoln Landscaping Inc.	Decision issued on November 16, 2016 Complaint valid
PR-2016-019	M.D. Charlton Co. Ltd.	Decision made on July 6, 2016 Complaint premature
PR-2016-020	Canadian Maritime Engineering Ltd.	Decision issued on September 8, 2016 Inquiry ceased
PR-2016-021	Springcrest Inc.	Decision issued on November 21, 2016 Complaint valid
PR-2016-022	CartoVista Inc.	Decision made on July 14, 2016 Complaint premature
PR-2016-023	Vurtur Communication Group Inc. (Open plus)	Decision made on July 26, 2016 Not a potential supplier
PR-2016-024	ADRM Technology Consulting Group Corp. (ADRM TEC)	Decision issued on December 16, 2016 Complaint valid in part
PR-2016-025	Solutions Serafin Inc.	Decision made on August 9, 2016 Late filing
PR-2016-026	Caduceon Environmental Laboratories	Decision issued on October 26, 2016 Inquiry ceased
PR-2016-027	M.D. Charlton Co. Ltd.	Decision made on December 16, 2016 Complaint not valid
PR-2016-028	Masterbedroom Inc.	Decision made on August 25, 2016 Not a designated contract
PR-2016-029	Construction Longer Inc.	Decision made on August 24, 2016 Complaint premature
PR-2016-030	L.P. Royer Inc.	Decision issued on January 10, 2017 Complaint valid
PR-2016-031	Medi+Sure Canada Inc.	Decision issued on January 27, 2017 Complaint valid
PR-2016-032	Masterbedroom Inc.	Decision made on September 14, 2016 Not a designated contract
PR-2016-033	HeartZAP Services Inc.	Decision made on September 13, 2016 No reasonable indication of a breach
PR-2016-034	Bravo Zulu Productions Inc.	Complaint withdrawn on October 20, 2016
PR-2016-035	Agence Gravel Inc.	Decision issued on January 26, 2017 Complaint valid
PR-2016-036	NATTIQ	Complaint withdrawn on November 9, 2016
PR-2016-037	Masterbedroom Inc.	Decision made on October 11, 2016 No jurisdiction
PR-2016-038	Keller Equipment Supply Ltd.	Decision made on October 20, 2016 No reasonable indication of breach
PR-2016-039	Telecore	Decision made on October 27, 2016 Late filing
PR-2016-040	R2Sonic LLC	Decision made on October 27, 2016 No reasonable indication of breach
PR-2016-041	The Masha Krupp Translation Group Ltd.	Decision issued on March 15, 2017 Complaint valid in part
PR-2016-042	Colliers Project Leaders, Tiree Facility Solutions Inc.	Decision issued on March 2, 2017 Complaint valid
PR-2016-043	Hewlett-Packard (Canada) Co.	Decision issued on March 20, 2017 Complaint not valid

File No.	Complainant	Status/Decision
PR-2016-044	Rebanks Pepper Littlewood Architects Inc.	Decision made on November 23, 2016 No reasonable indication of breach
PR-2016-045	TPG Technology Consulting Ltd.	Decision made on November 30, 2016 Late filing
PR-2016-046	Marine International Dragage (M.I.D.) Inc.	Decision made on December 12, 2016 Complaint premature
PR-2016-047	HDP Group Inc.	Decision made on December 28, 2016 No reasonable indication of breach
PR-2016-048	TPG Technology Consulting Ltd.	Decision made on December 29, 2016 No reasonable indication of breach
PR-2016-049	StenoTran Services Inc.	Decision made on January 23, 2017 No reasonable indication of breach
PR-2016-050	Les Gestions Jacques Delaney Inc.	Decision made on January 20, 2017 Late filing
PR-2016-051	Marine International Dragage (M.I.D.) Inc.	Decision made on March 13, 2017 Inquiry ceased
PR-2016-052	Paystation Inc.	Decision made on February 1, 2017 Complaint premature
PR-2016-053	Weinmann Limited	Decision made on February 3, 2017 Not a designated contract
PR-2016-054	Systematix IT Solutions	Complaint abandoned on February 21, 2017
PR-2016-055	Marine International Dragage (M.I.D.) Inc.	Decision made on March 13, 2017 Inquiry ceased
PR-2016-056	Valcom Consulting Group	Accepted for inquiry–In progress
PR-2016-057	Anton Parr	Complaint abandoned on March 8, 2017
PR-2016-058	Bronson Consulting	Accepted for inquiry–In progress
PR-2016-059	M.D. Charlton Co. Ltd.	Decision made on February 24, 2017 Complaint premature
PR-2016-060	CRAFM Inc.	Decision made on March 8, 2017 No reasonable indication of breach
PR-2016-061	398 3200 Canada Inc. (Apogée)	Decision made on March 8, 2017 Late filing
PR-2016-062	Slenke Inc.	Accepted for inquiry–In progress
PR-2016-063	812502 Ontrion Inc. d/b/a Action Meals	Decision made on March 14, 2017 Late filing
PR-2016-064	Leonardo S.p.A.	Accepted for inquiry–In progress
PR-2016-065	D4Is Solutions Inc.	Accepted for inquiry–In progress
PR-2016-066	Pauli Systems Inc.	Accepted for inquiry–In progress
PR-2016-067	Joli Distributions Inc.	Under consideration
PR-2016-068	Yeva Vision	Decision made on March 29, 2017 Complaint premature
PR-2016-069	Deloitte Inc.	Accepted for inquiry–In progress
PR-2016-070	Park Air	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-2014-067	Heddle Marine Services Inc.	Heddle Marine Services Inc.	A-236-15 Application withdrawn January 11, 2017
PR-2014-053	Monroe Solutions Group Inc.	Monroe Solutions Group Inc.	A-321-15 Application dismissed November 10, 2017
PR-2014-054 and PR-2014-056	Monroe Solutions Group Inc.	Monroe Solutions Group Inc.	A-323-15 Application dismissed November 10, 2016
PR-2015-051 and PR-2015-067	Oshkosh Defense Canada	Attorney General of Canada	A-219-16 In progress
PR-2015-051 and PR-2015-067	Oshkosh Defense Canada	Oshkosh Defense Canada	A-220-16 In progress
PR-2015-064	Masterbedroom Inc.	Charley's Furniture	A-248-16 Application withdrawn August 15, 2016
PR-2015-060	HDT Expeditionary Systems Inc.	HDT Expeditionary Systems Inc.	A-277-16 In progress
PR-2016-001	The Access Information Agency Inc.	The Access Information Agency Inc.	A-323-16 In progress
PR-2016-001	The Access Information Agency Inc.	Attorney General of Canada	A-329-16 In progress
PR-2015-070	M.D. Charlton Co. Ltd.	M.D. Charlton Co. Ltd.	A-310-16 Application withdrawn September 27, 2016
PR-2016-003	Francis H.V.A.C. Services Ltd.	Francis H.V.A.C. Services Ltd.	A-356-16 In progress
PR-2016-018	Lincoln Landscaping Ltd.	Attorney General of Canada	A-388-16 Application discontinued December 5, 2016
PR-2016-021	Springcrest Inc.	Attorney General of Canada	A-462-16 In progress
PR-2016-027	M.D. Charlton Co. Ltd.	Attorney General of Canada	A-21-17 In progress
PR-2016-030	L.P. Royer Inc.	Attorney General of Canada	A-45-17 In progress
PR-2016-035	Agence Gravel Inc.	Attorney General of Canada	A-66-17 In progress
PR-2016-031	Medi+Sure Canada Inc.	Attorney General of Canada	A-56-17 Application discontinued March 22, 2017

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

CUSTOMS AND EXCISE 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 file 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. A decision and its reasons are usually issued much sooner.

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 did not issue any orders under the *Customs Act*. There was one outstanding request 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 52 appeals.

The Tribunal heard 31 appeals, 30 under the *Customs Act* and one under *SIMA*. It issued decisions on 29 appeals, which consisted of 24 appeals under the *Customs Act*, one under *SIMA* and four remand cases from the Federal Court of Appeal.

Thirty-nine appeal cases were outstanding at the end of the fiscal year. Several of these appeals were in abeyance at the request of the parties.

Appeals Before the Tribunal in Fiscal Year 2016-2017

Appeal No.	Appellant	Date of Decision	Status/Decision
<i>Customs Act</i>			
AP-2009-046R	Igloo Vikski Inc.	December 8, 2016	Closed
AP-2011-057R and AP-2011-058R	Marmen Énergie Inc. and Marmen Inc.	July 7, 2016	Dismissed
AP-2012-018	Helly Hansen Canada Limited	October 28, 2016	Withdrawn
AP-2012-037	Northern Amerex Marketing Inc.	October 13, 2016	Withdrawn
AP-2012-052R	Cross Country Parts Distributors Ltd.	August 19, 2016	Dismissed
AP-2013-029R	Eastern Division Henry Schein Ash Arcona Inc.	August 15, 2016	Dismissed
AP-2013-038	Sunpan Trading & Importing Inc.	May 20, 2016	Withdrawn
AP-2014-009	Maples Industries, Inc.	July 18, 2016	Allowed
AP-2014-018	Air Canada	January 24, 2017	Withdrawn
AP-2014-023	Dealers Ingredients Inc.		In progress
AP-2014-024	Globe Union (Canada Inc.)	September 30, 2016	Allowed
AP-2014-031	Conteneurs Shop Containers	November 29, 2016	Withdrawn
AP-2014-032	Les Services de Conteneurs A.T.S. Inc.	November 29, 2016	Withdrawn
AP-2014-041	Tri-Ed Ltd.	February 27, 2017	Allowed in part
AP-2014-044	Wolseley-Western Mechanical	April 15, 2016	Withdrawn
AP-2014-045	Les pièces d'auto Transbec	March 13, 2017	Withdrawn
AP-2015-001	Innovex Produits Techniques Inc.	August 22, 2016	Withdrawn
AP-2015-009	Les pièces d'auto Transit Inc.	March 13, 2017	Withdrawn
AP-2015-010	D. Josefowich	May 9, 2016	Dismissed
AP-2015-011	J. Cheese Inc.	September 13, 2016	Dismissed
AP-2015-013	Y. Gosselin	June 9, 2016	Dismissed
AP-2015-014	Costco Wholesale Canada Ltd.		In progress
AP-2015-018	Délices de la Forêt Inc.	May 26, 2016	Dismissed
AP-2015-020	Univar Canada Ltd.	April 14, 2016	Withdrawn
AP-2015-021	Rona Corporation	October 17, 2016	Dismissed
AP-2015-022	Schlumberger Canada Limited		In progress
AP-2015-023	Summer Infant Canada Ltd.	October 4, 2016	Withdrawn
AP-2015-024	Toys R Us	July 22, 2016	Dismissed
AP-2015-026	Digital Canoe Inc.	August 22, 2016	Dismissed
AP-2015-027	Nestlé Canada Inc.	February 7, 2017	Dismissed
AP-2015-028	First Jewelry Ltd.	November 25, 2016	Dismissed
AP-2015-029	Sowa Tool and Machine Company Limited	September 23, 2016	Withdrawn
AP-2015-030	A. Waller	July 7, 2016	Withdrawn
AP-2015-031	G. Bradford	September 12, 2016	Dismissed
AP-2015-032	Rona Corporation	May 5, 2016	Withdrawn
AP-2015-033	Build.com Inc.	December 14, 2016	Dismissed
AP-2015-034	Best Buy Canada Ltd.	February 27, 2016	Allowed
AP-2015-035	CDC Foods Inc.	December 14, 2016	Dismissed
AP-2015-036	P & F USA Inc.	February 27, 2016	Allowed
AP-2016-001	LG Electronics Canada Inc.	February 27, 2016	Allowed
AP-2016-002	Premier Gift Ltd.	February 21, 2017	Allowed
AP-2016-003	Philips Electronics Ltd.	March 13, 2017	Dismissed
AP-2016-004	R.S. Abrams	December 21, 2017	Dismissed
AP-2016-005	Canac Marquis Grenier Ltée	February 22, 2017	Dismissed
AP-2016-006	Patrick Morin Inc.		In abeyance

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2016-007	LRI Lightning International Inc.		In progress
AP-2016-008	Artcraft Company Inc.	December 7, 2016	Withdrawn
AP-2016-009	T. Meunier		In progress
AP-2016-010	Costco Wholesale Canada Ltd.	December 23, 2016	Withdrawn
AP-2016-011	Oakville Stamping & Bending Ltd.	October 14, 2016	Withdrawn
AP-2016-012	Patrick Morin Inc.		In abeyance
AP-2016-013	Medical Mart Supplies Inc.		In progress
AP-2016-014	E-Card ID Products Ltd.		In progress
AP-2016-015	CDC Foods Inc.	December 14, 2016	Dismissed
AP-2016-016	Les Industries Touch Inc.	March 27, 2017	Dismissed
AP-2016-017	RBP Imports Inc.		In progress
AP-2016-018	Implus Footcare LLC	December 13, 2016	Withdrawn
AP-2016-019	Hydraulic Source Inc.		In progress
AP-2016-020	Sonos Inc.		In progress
AP-2016-021	Skotidakis Goat Farm		In progress
AP-2016-022	Sojag Inc.	January 10, 2017	Withdrawn
AP-2016-023	Regional Medical Products Inc.	March 2, 2017	Withdrawn
AP-2016-024	Stryker Canada Holding Company	January 20, 2017	Withdrawn
AP-2016-025	Janicki & Associates Ltd.		In progress
AP-2016-026	Canac Marquis Grenier Ltée		In progress
AP-2016-027	Best Buy Canada Ltd.		In progress
AP-2016-028	Regional Medical Products Inc.		In progress
AP-2016-029	Ergomat Canada Inc.	February 13, 2017	Withdrawn
AP-2016-030	Rona Inc.		In abeyance
AP-2016-031	Rona Inc.		In progress
AP-2016-032	A. Lax	March 17, 2017	Withdrawn
AP-2016-033	B. Carr		In progress
AP-2016-034	Richelieu Hardware Ltd.		In abeyance
AP-2016-035	Partick Morin Inc.		In abeyance
AP-2016-036	Best Buy Canada Ltd.		In abeyance
AP-2016-037	R. Sulit		In progress
AP-2016-038	Alliance Mercantile Inc.		In progress
AP-2016-039	Worldpac Canada Inc.		In progress
AP-2016-040	Danson Décor Inc.		In abeyance
AP-2016-041	Danson Décor Inc.		In abeyance
AP-2016-042	Holland Imports Inc.		In abeyance
AP-2016-043	Canac Marquis Grenier Ltée		In abeyance
AP-2016-044	Sacs Industriels Inc.		In progress
AP-2016-045	Andrew Sheret Purchasing Ltd.		In progress
AP-2016-046	A. Cowan		In progress
AP-2016-047	Johnston Research and Performance Inc.		In progress
AP-2016-048	Rona Inc.		In progress
AP-2016-049	Agrisac (6350747 Canada Inc.)		In abeyance
AP-2016-050	Gentec International		In progress
AP-2016-051	The Source (Bell) Electronics Inc.		In abeyance
AP-2016-052	J.F. Allard		In progress
Special Import Measures Act			
EA-2015-003	Sistemalux Inc.	July 26, 2016	Dismissed

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-2014-009—Maples Industries, Inc.

This appeal concerned the conditions required to qualify for the benefits of the preferential United States Tariff (UST) established under *NAFTA*, specifically certain *de minimis* provisions of the *NAFTA Rules of Origin Regulations* for textile goods and the exception for self-produced materials.

The appeal was brought by Maples Industries, Inc. (Maples), a manufacturer and exporter of accent rugs used in homes located in the United States. The goods in issue were composed of synthetic filament nylon yarn, polypropylene mesh fabric (the backing), natural rubber latex, vulcanizing accelerators, chloride celling agents, nylon filament sewing thread, paints, colours and tints. Two components of the goods in issue, namely, the nylon filament sewing thread and the backing, originated from outside of a *NAFTA* country. The thread was used to serge the edges of the rug and comprised 0.22 percent of the total weight of the finished rug. The backing was made of woven polypropylene strips and comprised 6.71 percent of the total weight of the finished rug.

Maples argued that the goods in issue qualify for preferential tariff treatment pursuant to the UST. Maples submitted that the two non-originating materials used in the production of the goods in issue fall below the *de minimis* threshold of seven percent or less by weight found in subsection 5(6) of the *NAFTA Rules of Origin Regulations* and should thus be disregarded for the purposes of determining the origin of the goods in issue.

In the alternative, Maples argued that the goods in issue also qualify as originating goods under *NAFTA* by the combination of a “self-produced material” election for the tufted fabric and by application of the *de minimis* rule to the monofilament yarn. Maples took the position that the tufted fabric produced in the course of the production process is a “self-produced material”, which, if classified in heading No. 58.02, undergoes the necessary transformation into a finished rug of heading No. 57.03. Applying the “self-produced material” election with respect to the tufted fabric, the remaining non-originating material was the monofilament yarn, which the CBSA accepted as qualifying for the *de minimis* rule.

The parties disagreed on the tariff classification of the tufted fabric in its role as a self-produced material. Maples submitted that it was classified in heading No. 58.02 as a tufted fabric. According to the CBSA, the tufted fabric was an “unfinished carpet” that has all the characteristics of a floor covering and its textile materials serve as the exposed surface of the tufted fabric when in use. The fabric should therefore have been classified in heading No. 57.03 as a carpet or other textile floor covering. As such, it was the CBSA’s position that the tufted fabric does not undergo the required change in tariff classification in order to allow the goods in issue to qualify for preferential tariff treatment.

The Tribunal did not adopt Maples’ interpretation of the *de minimis* provision; however, it did rule that the tufted fabric was a self-produced material and that it should be classified in heading No. 58.02. The Tribunal therefore held that the goods in issue qualified for the preferential UST.

AP-2015-011—J. Cheese Inc.

The issue in this appeal was whether the goods in issue were considered cheese fondue under tariff item No. 2106.90.41.10 of the schedule of the *Customs Tariff*, as claimed by J. Cheese Inc. (JCI), or whether they were considered grated cheese under tariff item No. 0406.20.92 (over access commitment), as determined by the CBSA. Although JCI described the goods as cheese fondue, the product, which consisted of several varieties of shredded cheese and certain minor constituents, was predominantly used as a pizza topping.

At issue was whether certain manufacturing processes and the inclusion of certain ingredients resulted in a product not having the character of cheese. This issue arose because the explanatory note to Chapter 4 indicated that heading No. 04.06 covered “all kinds of cheese”, including “grated or powdered cheese”. Furthermore, the *Explanatory Notes to the Harmonized Commodity Description and Coding System* (the *Explanatory Notes*) state that “[t]he presence of meat, fish, crustaceans, herbs, spices, vegetables, fruit, nuts, vitamins, skimmed milk powder, etc., does not affect classification provided that the goods retain the character of cheese.”

Canadian regulations prescribe the compositional standards that certain dairy products must adhere to in order to be sold in Canada. JCI took the view that because its product did not adhere to these standards, the goods ought not to be considered to be cheese. However, the Tribunal found that the Canadian regulations were of limited assistance in resolving the tariff classification issue, as they more narrowly define what a cheese is than do the *Codex Alimentarius* and the *Explanatory Notes*. The Tribunal found that while norms established by other regulatory frameworks, common industry usage, etc., can serve as guidance to the Tribunal, they must be considered secondary to the terms of the *Customs Tariff*.

The Tribunal also found that it is bound to determine tariff classification based on the *General Rules of the Interpretation of the Harmonized System* (the *General Rules*) irrespective of whether a good falls under a supply management regime. This issue was addressed again in *Nestlé Canada Inc.* (File No. AP-2015-027).

The Tribunal found that the goods in issue were comprised of cheese (at 99 percent), and that they were used, marketed and distributed as such. They could not be distinguished from cheese on a molecular level either. The Tribunal found that, notwithstanding the manufacturing processes employed by JCI or the additional ingredients included the goods in issue, they retained the character of cheese and, accordingly, the appeal was dismissed.

AP-2015-034—Best Buy Canada Ltd.

In *Best Buy Canada Ltd.* (AP-2015-034), which was heard together with *P&F USA Inc.* (AP-2015-036) and *LG Electronics Canada Inc.* (AP-2016-001), the Tribunal pronounced for the first time on the question whether a certificate signed by the user of a good was an essential requirement for the good to be classified under a conditional relief tariff item of the schedule to the *Customs Tariff*.

The appellants had applied for refunds of the duties paid on certain televisions, on the basis that the televisions were articles for use in automatic data processing (ADP) machines and units thereof, and, as such, should have benefited from duty-free treatment under tariff item No. 9948.00.00. The CBSA denied the claims. It took the view that the appellants had not substantiated the actual use of the goods in issue in ADP machines by providing records in accordance with the *Imported Goods Records Regulations*, which require a person who imports commercial goods that have been released free of duty because of their intended use to keep “a certificate or other record signed by the user of the commercial goods that shows the user’s name, address and occupation and indicates the actual use made of the commercial goods.”

On appeal, the Tribunal determined that the issue of whether goods are classified in a tariff item of Chapter 99 is not determined by the question, in itself, of whether the importer met its record-keeping obligations pursuant to the *Imported Goods Records Regulations*, as neither the *Customs Act* nor the *Customs Tariff* make such compliance a substantive condition for the tariff classification of goods. Instead, the Tribunal found that classification in a tariff item of Chapter 99 depends on the evidence an importer can adduce to show that the goods correspond to the description of the relevant tariff item, in accordance with sections 10 and 11 of the *Customs Tariff*. The Tribunal also determined that the relevant provision of the *Imported Goods Records Regulations* did not apply to goods that are not released free of duty.

The Tribunal reaffirmed that in order for goods to be classified under tariff item No. 9948.00.00, the goods must be shown to be (1) articles (2) for use in (3) one of the host goods identified in that tariff item. The Tribunal also reaffirmed that the expression “for use in”, as defined in subsection 2(1) of the *Customs Tariff*, requires evidence that shows, on the balance of probabilities, that the goods are actually used in conformity with the tariff item, but that this evidence is not restricted to certificates signed by the user of the goods.

The Tribunal found that the appellants had provided evidence that showed, on the balance of probabilities, that the imported televisions complied with the conditions for classification under tariff item No. 9948.00.00. Accordingly, the appeals were allowed.

The same issue also arose in *Tri-Ed Ltd.* (File No. AP-2014-041). However, the Tribunal concluded that the evidence did not show that the goods in issue in that case met the conditions for classification under tariff item No. 9948.00.00.

Canada (Attorney General) v. Igloo Vikski Inc., [2016] 2 SCR 80, 2016 SCC 38 (CanLII)

On September 29, 2016, the Supreme Court of Canada (Côté, J., dissenting) allowed the appeal by the Attorney General, thereby confirming the Tribunal’s decision in File No. AP-2009-046 to classify imported hockey gloves under tariff item No. 6216.00.00 of the *Customs Tariff* as “gloves, mittens and mitts” (as the CBSA had originally determined). The Tribunal’s decision had been previously overturned by the Federal Court of Appeal. The Supreme Court determined that the Tribunal’s interpretation and application of Rules 1 and 2 of the *General Rules* were reasonable. Specifically, the Supreme Court held that the *General Rules* allow for the conjunctive application of Rules 1 and 2 to a determination of the heading(s) under which a good is *prima facie* classifiable.

Canada (Attorney General) v. Bri-Chem Supply Ltd.; *Canada (Attorney General) v. Ever Green Ecological Services Inc.*; *Canada (Attorney General) v. Southern Pacific Resource Group*, 2016 FCA 257 (CanLII)

In three decisions dated October 16, 2015 (Files No. AP-2014-017, AP-2014-027 and AP-2014-028), the Tribunal found that an importer may make revenue-neutral corrections to tariff treatment declarations on the basis of section 32.2 of the *Customs Act*. The Tribunal also found that the CBSA had committed an abuse of process by failing to apply the Tribunal’s earlier decision in *Frito-Lay Canada Inc.* (File No. AP-2012-002), and by relitigating the same issues that had been decided by that matter. The Attorney General of Canada appealed the three decisions. The appeals were dismissed by the Federal Court of Appeal on October 21, 2016.

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-2013-057	BSH Home Appliance Ltd.	BSH Home Appliance Ltd.	A—32—15 Application dismissed
AP-2012-009	Volpak Inc.	Volpak Inc.	A-197-15 In progress
AP-2014-025	ContainerWest Manufacturing Ltd.	ContainerWest Manufacturing Ltd.	A-351-15 Application dismissed
AP-2014-017	Bri-Chem Supply Ltd.	Attorney General of Canada	A-534-15 Application dismissed
AP-2014-027	Ever Green Ecological Services Inc.	Attorney General of Canada	A-535-15 Application dismissed
AP-2014-028	Southern Pacific Resource Corp.	Attorney General of Canada	A-536-15 Application dismissed
AP-2014-021	Worldpac Canada Inc.	Worldpac Canada Inc.	A-154-16 In progress
AP-2014-024	Globe Union (Canada) Inc.	Attorney General of Canada	A-477-16 In progress
AP-2015-028	First Jewelry Ltd.	First Jewelry Ltd.	A-62-17 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

ECONOMIC AND TARIFF INQUIRIES

The Government of Canada may refer economic or tariff matters to the Tribunal for inquiry and request that it recommendations in a public report. The Tribunal’s transparent inquiry process and expertise in trade and economics positions it well to provide sound and impartial advice and to take into account all the interests at stake. The specifics of how the Tribunal conducts such an inquiry depend on the nature of the issues and the scope and/or time frame of the Government’s request.

Economic and Tariff Inquiries Completed in the Fiscal Year

	GC-2016-001
Product	Gypsum board
Type of case/country	Dumping/United States
Date of finding	January 4, 2017
Finding	Has caused harm or will cause harm
Questionnaires sent	0
Questionnaires received	0
Requests for exclusions	0
Requests for exclusions granted	0
Participants	124
Pages of official record	80 ³
Public hearing days	8
Witnesses	39

The Tribunal completed one economic and tariff inquiry in the fiscal year—the first in several years. There were no inquiries in progress at the end of the fiscal year.

3. The official record of this matter was combined with the official record in Inquiry No. NQ-2016-002. The official record in Reference No. GC-2016-001 consists of the documents on record in that matter prior to the decision to combine both records.

GC-2016-001—Gypsum Board

This inquiry was referred to the Tribunal on October 13, 2016, by His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 18 of the *CITT Act*. The purpose of the inquiry was to determine whether the imposition of provisional duties or duties applicable to gypsum board imported from the United States for markets in Manitoba, British Columbia, Saskatchewan, Alberta, Yukon and the Northwest Territories was contrary to Canada's economic, trade or commercial interests, and specifically whether such an imposition had or would have had the effect of substantially reducing competition in those markets or causing significant harm to consumers of those goods or to businesses who use them. 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 in conjunction with Inquiry No. NQ-2016-002. The Tribunal sent specific requests for information to multiple parties ranging from purchasers to local governments. These requests for information were tailored to obtain a more direct view of the market than would be typically seen in a final injury inquiry or an expiry review.

The Tribunal's hearing was held in Edmonton, Alberta, from November 28 to December 8, 2016, where participants testified to the injury to the domestic gypsum board industry and to other matters relevant to Inquiry No. NQ-2016-002 and to Reference No. GC-2016-001. Thirty-seven witnesses appeared before the Tribunal. There were 26 participants to the case. Parties who were participants in Inquiry No. NQ-2016-002 were automatically considered to be parties to Reference No. GC-2016-001. Twenty-five parties were participants to both inquiries. One hundred and eight other parties filed notices of participation with the Tribunal in Reference No. GC-2016-001. The official record of this matter was combined with that of Inquiry No. NQ-2016-002.

After reviewing the documentary and oral evidence presented to the Tribunal, it came to the conclusion that the imposition of provisional duties or duties applicable to gypsum board imported from the United States for markets in Manitoba, British Columbia, Saskatchewan, Alberta, Yukon and the Northwest Territories, in its full amount, was contrary to Canada's economic, trade or commercial interests, and specifically that such an imposition had or would substantially reduce competition in those markets, or cause significant harm to consumers of those goods or to businesses that use them.

The Tribunal made the following recommendations:

- That provisional duties collected be retained by the federal government and used to refund, either wholly or in part, the higher costs for imported and domestically produced gypsum board purchased since the imposition of the provisional duties on September 6, 2016, up to but not including January 4, 2017;
- That all of the final duties imposed on cooperating exporters be remitted to them through a simplified process until the earlier of a) six months, from the date of this report, i.e. from January 4, 2017, up to and including July 4, 2017, or b) the date the subject imports reach a maximum volume of 229 million square feet, allocated on the basis of historical export shares; this temporary elimination of the duties would give time for the downstream market participants (especially drywall installers) to perform existing fixed-price contracts and, going forward, to give them an opportunity to reflect the duties in new contracts;
- That final duties for any cooperating exporters on any export transaction involving subject gypsum board to Canada should not exceed 43 percent of the export price at any time on and after the earlier of July 5, 2017, or the date the subject imports reach a maximum volume of

- 229 million square feet, a reduced rate which should allow either U.S. exports or domestic shipments from Eastern Canada to continue to supply the Western Canadian market;
- That, considering the limited amount of data available to the Tribunal at the time of the inquiry in GC—2016-001, the reduced final duty be reviewed at the appropriate time; and
 - That, if the Government considers the measures mentioned above as insufficiently alleviating the hardship suffered by certain residents of the Regional Municipality of Wood Buffalo (the Fort McMurray region) as a result of the May 2016 wildfires, and considering the consent by the domestic industry to a special remission in connection with the Fort McMurray region, the Government grant a special remission in an amount equivalent to the dumping duties collected on gypsum board specifically used for the rebuilding of the Fort McMurray region, on terms and conditions that ensure that the end users or consumers benefiting from the measure do not pay more than the amount that they would have paid for that gypsum board in the absence of duties. This special remission should cover subject imported gypsum board which is specifically linked to the reconstruction effort, and is purchased and installed between September 6, 2016, and December 31, 2019.

The Minister of Finance responded to these recommendations in February 2017.