

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2011**

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June 1, 2011

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

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Tribunal's Annual Report for the fiscal year ending March 31, 2011.

Yours sincerely,

Diane Vincent
Acting Chairperson

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CHAPTER I

HIGHLIGHTS

The Canadian International Trade Tribunal is an administrative tribunal operating within Canada's trade remedy system. It provides Canadian and international businesses with access to fair, transparent and timely processes for the investigation of trade remedy cases and complaints concerning federal government procurement and for the adjudication of appeals on customs and excise tax matters. At the request of the Government, the Tribunal provides advice in tariff, trade, commercial and economic matters.

In 2010-2011, the Tribunal issued decisions in more than 200 cases. The Tribunal members and staff successfully managed a substantial and complex caseload involving a total of 258 participants, 82 witnesses and more than 108,000 pages of official record.

Although the Tribunal experienced a decline in the number of new anti-dumping investigations, a situation which is in line with a worldwide trend reported by the World Trade Organization (WTO) for the first half of 2010, the activities relating to public procurement complaints and appeals under the *Customs Act*, the *Special Import Measures Act (SIMA)* and the *Excise Tax Act* remained strong.

In an effort to improve client services, the Tribunal successfully launched the electronic distribution of its records in *SIMA* cases using a secure encrypted USB key, which now allows counsel to access and search all documents on record. This new initiative has made the Tribunal more environmentally friendly and has reduced operating costs.

On October 1, 2010, the Chairperson of the Tribunal, Mr. André F. Scott, was appointed to the Federal Court. The Tribunal would like to thank Mr. Scott for his excellent work, as well as for the leadership and dedication that he demonstrated during his time with the Tribunal, which he joined in February 2008.

Pursuant to section 8 of the *Canadian International Trade Tribunal Act (CITT Act)*, when the office of chairperson is vacant, the Tribunal may authorize one of the vice-chairpersons to act as chairperson, exercising and performing all the powers, duties and functions of the position. The two vice-chairpersons of the Tribunal, Mr. Serge Fréchette and Ms. Diane Vincent, have served as acting chairpersons on a rotational basis since Mr. Scott's departure.

In February 2010, Mrs. Ellen Fry's second term as member of the Tribunal expired. She had been a member of the Tribunal since 2001. The Tribunal wishes to acknowledge her significant contribution to the work of the Tribunal during those nine years.

Trade Remedies

The Tribunal plays a significant role within Canada's trade remedy system. Under *SIMA*, the Tribunal determines whether the dumping and subsidizing of imported goods cause injury or threaten to cause injury to a domestic industry. During 2010-2011, the Tribunal issued decisions in two preliminary injury inquiries and in two final injury inquiries. The estimated value of the Canadian market for the two final injury inquiries conducted by the Tribunal represented more than \$393 million. The Tribunal also issued a determination further to a remand decision of the Federal Court of Appeal. It received two requests to conduct public interest inquiries and one request for an interim review of the Tribunal's findings pursuant to *SIMA*. The Tribunal also issued two orders on expiry reviews. At the end of the fiscal year, one expiry review and one final injury inquiry were in progress.

Procurement Review

The Tribunal received 94 new procurement complaints. It rendered decisions in 157 cases, which included 72 cases that had been in progress at the end of fiscal year 2009-2010 and 1 case subsequent to a remand decision from the Federal Court of Appeal.

Appeals

During the fiscal year 2010-2011, a total of 70 new appeals were filed with the Tribunal pursuant to *SIMA* and the *Customs Act*. The Tribunal issued decisions on 31 appeals from decisions of the President of the Canada Border Services Agency (CBSA) and the Minister of National Revenue pursuant to the *Customs Act* and the *Excise Tax Act*.

Outreach Activities

During the fiscal year, Tribunal members and staff made presentations to various international, legal, administrative and academic bodies. The Tribunal also hosted official delegations from Ethiopia, Chinese Taipei, Indonesia, Vietnam, the People's Republic of China (China) and the Republic of Korea (Korea). The Tribunal also works in cooperation with other government entities as part of its mandate.

Caseload

The first table below contains statistics pertaining to the Tribunal's caseload for 2010-2011. The second table contains statistics relating to other case activities in 2010-2011. These statistics illustrate the complexity and diversity of the cases considered by the Tribunal.

Tribunal Caseload Overview—2010-2011

	Cases Brought Forward From Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions/ Reports Issued	Decisions to Initiate	Decisions Not to Initiate	Cases Withdrawn/ Closed	Cases Outstanding (March 31, 2011)
Trade remedies								
Preliminary injury inquiries	1	1	2	2	N/A	N/A	-	-
Inquiries	1	2	3	2	N/A	N/A	-	1
Requests for public interest inquiries ¹	-	2	2	-	-	1	1	-
Public interest inquiries	-	-	-	-	-	-	-	-
Requests for interim reviews	-	1	1	-	-	-	1	-
Interim reviews	1	-	1	1	N/A	N/A	-	-
Expiries ²	-	1	1	1	1	-	-	-
Expiry reviews	2	1	3	2	N/A	N/A	-	1
Remanded cases	1	-	1	1	N/A	N/A	-	-
TOTAL	6	8	14	9	1	1	2	2
Procurement								
Complaints	72	94	166	93 ³	52	63	6	4
Remanded cases	-	1	1	1	N/A	N/A	N/A	-
TOTAL	72	95	167	94	52	63	6	4
Appeals								
Extensions of time								
<i>Customs Act</i>	6	2	8	4	N/A	N/A	-	4
<i>Excise Tax Act</i>	2	1	3	3	N/A	N/A	-	-
TOTAL	8	3	11	7	N/A	N/A	-	4
Appeals								
<i>Customs Act</i>	50 ⁴	67	117	29	N/A	N/A	34	54
<i>Excise Tax Act</i>	26	-	26	2	N/A	N/A	-	24
<i>Special Import Measures Act</i>	-	3	3	-	N/A	N/A	-	3
Remanded cases	-	1	1	-	N/A	N/A	-	1
TOTAL	76	71	147	31	N/A	N/A	34	82
Standing textile reference								
Requests to initiate investigations	-	-	-	-	-	-	-	-
Investigations	-	-	-	-	N/A	N/A	-	-

1. Includes one case that was withdrawn.
2. With respect to expiries, "decisions to initiate" refer to decisions to initiate expiry reviews.
3. Includes only cases for which the Tribunal decided to initiate inquiries.
4. Number changed due to reporting error in 2009-2010 annual report.

N/A = Not applicable

Statistics Relating to Case Activities in 2010-2011

	Trade Remedy Activities	Procurement Review Activities	Appeals	Standing Textile Reference	TOTAL
Orders					
Disclosure orders	9	1	-	-	10
Cost award orders	N/A	11	N/A	N/A	11
Compensation orders	N/A	2	N/A	N/A	2
Production orders	2	3	-	-	5
Postponement of award orders	N/A	8	N/A	N/A	8
Rescission of postponement of award orders	N/A	4	N/A	N/A	4
Directions/administrative rulings					
Requests for information	103	-	-	-	103
Motions	1	9	2	-	12
Subpoenas	3	-	-	-	3
Other statistics					
Public hearing days	14	-	21	-	35
File hearings ¹	6	53	8	-	67
Witnesses	46	-	36	-	82
Participants	54	77	127	-	258
Questionnaire replies	193	-	-	-	193
Exhibits ²	1,643	767	1,263	-	3,673
Pages of official records ²	43,402	39,541	25,535	-	108,478

1. A file hearing occurs where the Tribunal renders a decision on the basis of written submissions, without holding a public hearing.

2. Estimated.

N/A = Not applicable



CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES

Introduction

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

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

Mandate

The Tribunal is the main quasi-judicial institution in Canada's trade remedy system and has authority to:

- inquire into whether dumped or subsidized imports have caused, or are threatening to cause, injury to a domestic industry;
- 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 *WTO Agreement on Government Procurement (AGP)*, the *Canada-Chile Free Trade Agreement (CCFTA)* and the *Canada-Peru Free Trade Agreement (CPFTA)*;
- hear appeals of decisions of the CBSA made under the *Customs Act* and *SIMA* or of the Minister of National Revenue under the *Excise Tax Act*;

- inquire into and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance;
- investigate requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations and to make recommendations to the Minister of Finance on the requests; and
- inquire into complaints by domestic producers that increased imports are causing, or threatening to cause, injury to domestic producers and, as directed, make recommendations to the Government on an appropriate remedy.

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
19.013	Safeguard inquiries concerning goods imported from Costa Rica 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
19.02	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)	Global safeguard complaints by domestic producers
23(1.01) and (1.03)	Safeguard complaints by domestic producers concerning goods imported from the United States
23(1.02) and (1.03)	Safeguard complaints by domestic producers concerning goods imported from Mexico
23(1.04)	Safeguard complaints by domestic producers concerning goods imported from Israel
23(1.05) and (1.06)	Safeguard complaints by domestic producers concerning goods imported from Chile
23(1.07) and (1.08)	Safeguard complaints by domestic producers concerning goods imported from Costa Rica
23(1.09)	Safeguard complaints by domestic producers concerning goods imported from Iceland
23(1.091)	Safeguard complaints by domestic producers concerning goods imported from Norway
23(1.092)	Safeguard complaints by domestic producers concerning goods imported from Switzerland or Liechtenstein
23(1.093)	Safeguard complaints by domestic producers concerning goods imported from Peru
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
30.08 and 30.09	Extension inquiries with regard to global safeguard and anti-surge measures
30.14	Complaints by potential suppliers in respect of government procurement for designated contracts
30.21	Inquiries into market disruption and trade diversion in respect of goods originating in 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	Expiry reviews of measures relating to market disruption or trade diversion in respect of goods originating in China

Governing Legislation (cont'd)

Section	Authority
SIMA	
33 and 37	Advisory opinions on injury by reference from the CBSA or further to requests by affected parties
34(2)	Preliminary injury inquiries
37.1	Preliminary determinations of injury
42	Inquiries with respect to injury caused by the dumping and subsidizing of goods
43	Findings of the Tribunal concerning injury
44	Recommencement of inquiries (on remand from the Federal Court of Appeal or a binational panel)
45	Public interest inquiries
46	Advice to the CBSA regarding evidence of injurious dumping or subsidizing of like 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
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	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
Customs Act	
60.2	Applications for extensions of time to request a re-determination or a further re-determination
67	Appeals of decisions of the CBSA concerning value for duty, origin and tariff classification 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, 81.25 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 outside Canada

Method of Operation

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

The Tribunal proceeds through file hearings or public hearings. Public hearings are held at the Tribunal's offices in Ottawa, Ontario. Public hearings may also be held elsewhere in Canada, either in person or through videoconferencing. In 2010-2011, the Tribunal held a public hearing in Vancouver, British Columbia, for an expiry review of its order on potatoes. In accordance with section 35 of the *CITT Act*, hearings should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit.

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

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

The Tribunal's Web site provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as the *Canadian International Trade Tribunal Regulations*, the Rules, directives, guides, practice notices, Tribunal procedures 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 also choose a specific category of interest.

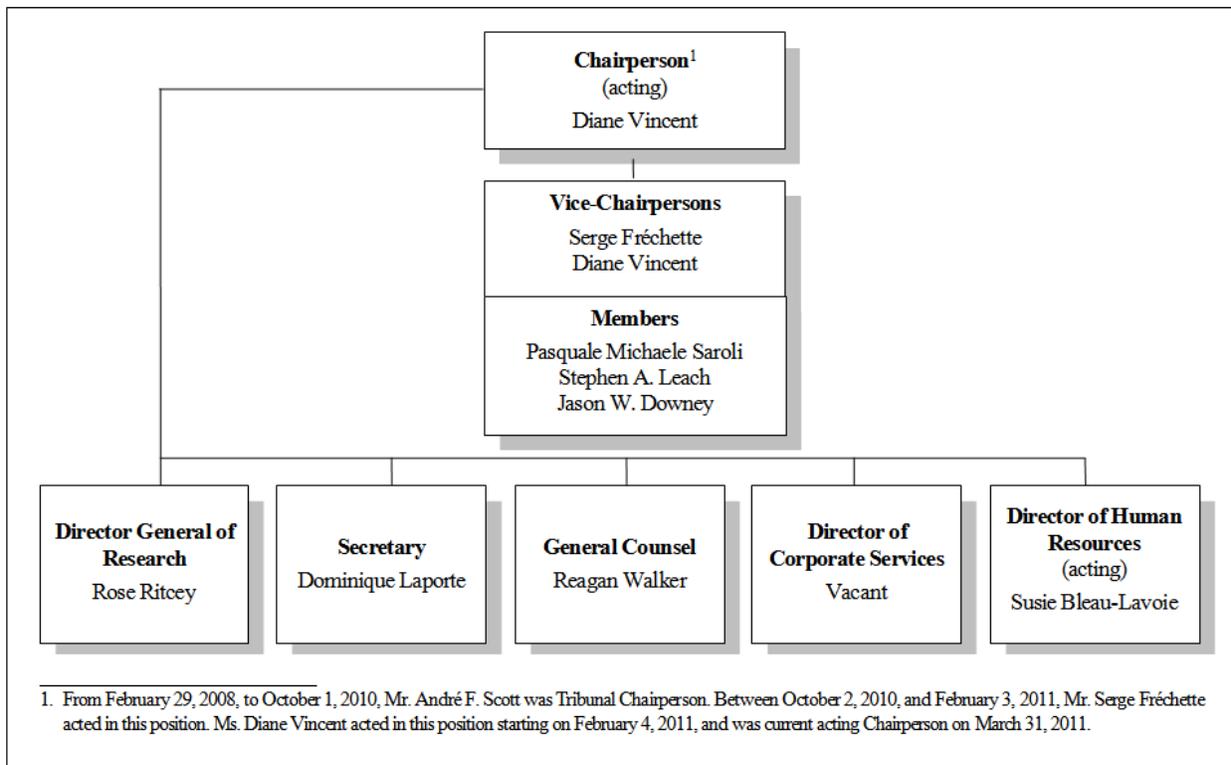
Members of the Tribunal

The Tribunal may be composed of up to seven full-time members, including a chairperson and two vice-chairpersons. All are appointed by the Governor in Council for a term of up to five years that is renewable once. The Chairperson is the Chief Executive Officer and is responsible for the assignment of a presiding member and panel members to cases and for the management of the Tribunal's work. Members come from a variety of educational backgrounds and experience.

Organization

The organization is led by the Chairperson and is supported by a permanent staff of 76 persons who are employees of the public service. The organizational structure is as follows:

- the **Chairperson**, the Chief Executive Officer, responsible for the assignment of cases to the members and for the management of the Tribunal's workload and all its resources;
- the **Secretary**, responsible for relations with the public and parties, the court registry functions of the Tribunal, editing and translation of Tribunal decisions, reports and other documents, information technology, information management and relations with government departments and foreign governments;
- the **Director General, Research**, responsible for the investigative portion of inquiries, including fact-finding related to tariff, trade, commercial and economic matters, and the provision of research services to the members of the Tribunal;
- the **General Counsel**, responsible for the provision of legal services to the members and staff of the Tribunal;
- the **Director of Corporate Services**, responsible for financial management, materiel management, accommodation and administrative services; and
- the **Director of Human Resources**, who provides planning and management of a full range of human resources services, programs, solutions and innovations for the Tribunal from both an operational and corporate perspective.



Consultations and External Relations

Through the Bench and Bar Committee, the Tribunal provides a forum to promote discussion on issues of procedure. The committee includes representatives from the Canadian Bar Association, counsel from the Department of Justice and members of the trade consulting community who appear regularly before the Tribunal. Although no meeting was held during this fiscal year, members of the Bench and Bar Committee were given the opportunity to comment on the ongoing review of the *Rules*. The Tribunal also consults with counsel, representatives of industries and others who appear or are likely to appear before the Tribunal, to exchange views on new procedures being considered by the Tribunal prior to their publication as guidelines or practice notices. The Tribunal also briefs federal government departments and trade associations on its procedures.

During the fiscal year, Tribunal members and staff made presentations at meetings of various international, legal, administrative and academic bodies, including the Seoul International Forum on Trade Remedies in Seoul, Korea, the annual meeting of the Canadian Council of Administrative Tribunals in Montréal, Quebec, the International Symposium on Forecasting in San Diego, California, and to students at the University of Ottawa and Queen's University.

The Tribunal hosted official delegations from Ethiopia, Chinese Taipei, Indonesia, Vietnam, China and Korea.

Staff also made presentations on the Tribunal's procurement review mandate to various administrative tribunals and government departments, including the Office of the Procurement Ombudsman and the Department of National Defence. In addition, the Tribunal made its expertise available to the Canadian trade negotiators in the context of the Doha Round of the WTO and various regional trade agreements.

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 section 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.

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 *NAFTA* binational panel. None of the Tribunal decisions was before a *NAFTA* binational panel during the fiscal year.

WTO Dispute Resolution

Governments that are members of the WTO may challenge the Government of Canada in respect of Tribunal injury findings or orders in dumping and countervailing duty cases before the WTO Dispute Settlement Body. This is initiated by intergovernmental consultations under the WTO Dispute Settlement Understanding. None of the Tribunal decisions was before the WTO Dispute Settlement Body during the fiscal year.



CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Process

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

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

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

Preliminary Injury Inquiries

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

In 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. The Tribunal completes its inquiry and renders its determination within 60 days.

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

Preliminary Injury Inquiry Activities

Preliminary injury inquiry No.	PI-2009-005	PI-2010-001
Product	Greenhouse bell peppers	Steel grating
Type of case/country	Dumping/Netherlands	Dumping and subsidizing/China
Date of determination	May 21, 2010	November 19, 2010
Determination	Injury	Injury
Participants	14	2
Exhibits	32	20
Pages of official record	750	3,350

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

As illustrated in the above table, the Tribunal completed two preliminary injury inquiries in the fiscal year. There were no preliminary injury inquiries in progress at the end of the fiscal year.

Final Injury Inquiries

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

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

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

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

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

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

The Tribunal must issue its finding within 120 days from the date of the preliminary determination of dumping and/or subsidizing by the CBSA. It has an additional 15 days to issue a statement of 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

Inquiry No.	NQ-2009-005	NQ-2010-001	NQ-2010-002
Product	Polyiso insulation board	Greenhouse bell peppers	Steel grating
Type of case/country	Dumping/United States	Dumping/ Netherlands	Dumping and subsidizing/China
Date of finding	May 6, 2010	October 9, 2010	In progress
Finding	No injury and no threat of injury	Threat of injury	
Questionnaires sent	67	144	
Questionnaires received	45	59	
Requests for exclusions	13	1	
Requests for exclusions granted	-	-	
Participants	9	6	
Exhibits	318	473	
Pages of official record	8,180	7,402	
Public hearing days	3	4	
Witnesses	12	10	

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. One final injury inquiry was still in progress at the end of the fiscal year. The two completed inquiries concerned polyiso insulation board and greenhouse bell peppers. In 2009, the estimated values of the Canadian market for the goods were, respectively, \$130 million and \$264 million. The following summaries were prepared for general information purposes only and are of no legal effect.

NQ-2009-005—Polyiso Insulation Board

This inquiry concerned dumped imports from the United States.

The Tribunal sent detailed questionnaires to 3 known domestic producers, 11 of the largest importers, 29 purchasers of polyiso insulation board and 24 foreign producers and exporters of the subject goods. Of the 67 questionnaires sent, 39 responses were used in the Tribunal's analysis. There were 9 participants in the inquiry, with 12 witnesses appearing before the Tribunal during 3 days of public hearing. The official record consisted of 318 exhibits, totalling 8,180 pages of documents.

The Tribunal first determined that polyiso insulation board produced in Canada was like goods in relation to the subject goods and constituted a single class of goods. The Tribunal then determined that the domestic industry was comprised solely of the complainant because the other two domestic producers were related to exporters of the subject goods.

The Tribunal found that the dumping of the subject goods did not cause injury to the domestic industry. Imports of the subject goods decreased over the period of inquiry and their prices were, for the most part, higher than the domestic industry's prices. With regard to the domestic industry's submission that it would have been materially better off "but for" the dumping, the Tribunal found that any price increase and the share of any incremental volume that could have reasonably been captured in the absence of dumping would yield a less than material effect to the domestic industry's net margin.

Likewise, the Tribunal determined that the evidence on record did not support a conclusion of threat of injury by the dumping of the subject goods. In the Tribunal's view, a substantial increase in dumped imports in Canada in the near to medium term was not likely, especially since demand and capacity utilization levels in the United States were expected to increase in the near future. Furthermore, import prices would not likely undercut or suppress Canadian prices in the near to medium term. As well, the potential for product shifting was low and there were no clearly foreseen and imminent negative effects of continued dumped imports on existing development and production efforts in Canada.

NQ-2010-001—Greenhouse Bell Peppers

This inquiry concerned dumped imports from the Netherlands.

The Tribunal sent detailed questionnaires to 40 known domestic growers, 33 marketers and agencies, 22 of the largest importers, 24 purchasers of greenhouse bell peppers and 25 foreign producers and exporters of the subject goods. Of the 144 questionnaires sent, 59 responses were used in the Tribunal's analysis. There were 6 participants in the inquiry. During the 4 days of public hearing, 10 witnesses appeared before the Tribunal. The official record consisted of 473 exhibits, totalling 7,402 pages of documents.

The Tribunal first determined that greenhouse bell peppers produced in Canada were like goods in relation to the subject goods. The Tribunal then concluded that field bell peppers produced in Canada were not like goods in relation to the subject goods. Finally, the Tribunal determined that the Ontario Greenhouse Vegetable Growers, which accounted for a major proportion of domestic production in and of itself, constituted the domestic industry.

The Tribunal observed that, despite a significant increase in the volume of imports of the subject goods, the domestic industry generally performed well and was able to increase production, capacity, sales volume, net income, gross margin, employment, wages and productivity, in addition to maintaining its rate of capacity utilization and market share. The only negative results were lower net returns, gross margin and net income observed in 2009. Accordingly, the Tribunal concluded that the dumping of the subject goods had not caused material injury to the domestic industry.

However, in its analysis, the Tribunal observed that the general trend in respect of increasing volumes of imports of subject goods observed during the period in inquiry was likely to continue in the near to medium term in the absence of anti-dumping duties. As there was no indication that the Dutch propensity to dump would disappear, the Tribunal considered that the renewed presence of dumped subject goods in the Canadian market was likely to transform the insignificant price depression that had occurred during isolated instances of the period of inquiry into significant price depression over the next two growing seasons. In the absence of anti-dumping duties, there would be increased pressure on other marketers to respond to Dutch lead prices, i.e. lower prices or risk losing business. The Tribunal therefore found that the clearly foreseen and imminent circumstances were such that the dumping of the subject goods was threatening to cause injury to the domestic industry.

The Tribunal received one product exclusion request concerning organic greenhouse bell peppers. The Tribunal was of the view that the domestic industry had provided sufficient evidence to demonstrate that it produced, or was capable of producing, organic greenhouse bell peppers. Therefore, the request was denied.

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

As already mentioned, there was one final injury inquiry in progress at the end of the fiscal year, *Steel Grating* (NQ-2010-002), which concerns dumped and subsidized imports from China.

Public Interest Inquiries Under Section 45 of SIMA

Following a finding of injury, the Tribunal notifies all interested parties that any submissions requesting a public interest inquiry must be filed within 45 days. It may initiate, either after a request from an interested person or on its own initiative, a public interest inquiry following a finding of injury caused by dumped or subsidized imports, 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.

Following its injury finding of March 23, 2010, in *Oil Country Tubular Goods* (NQ-2009-004), the Tribunal received two requests from Apex Distribution for public interest inquiries (PB-2010-001 and PB-2010-002). The first request was withdrawn. With regard to the second request, an inquiry was not initiated, as the request was received beyond the prescribed 45-day time limit.

Interim Reviews

The Tribunal may review its findings of injury or orders at any time, on its own initiative or at the request of the Minister of Finance, the CBSA or any other person or government (section 76.01 of *SIMA*). 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 put into evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at the time.

Interim Review Activities

Request for interim review No./Interim review No.	RD-2009-003 (interim review)	RD-2010-001 (request for interim review)
Product	Waterproof footwear and bottoms	Certain Fasteners
Type of case/country	Dumping/China	Dumping/China and Chinese Taipei Subsidizing/China
Date of order or of withdrawal	April 13, 2010	February 25, 2011
Order	Order amended	Request withdrawn
Participants	2	4
Exhibits	16	18
Pages of official record	225	125

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

As can be seen from the above table, the Tribunal ruled on one interim review received in the previous fiscal year (RD-2009-003). The Tribunal amended its order made on December 7, 2005, in Expiry Review No. RR-2004-008 to exclude certain dumped footwear from China on the basis that it was not likely to cause or threaten to cause injury to the domestic industry.

The Tribunal also received a request for an interim review during the fiscal year. Before the Tribunal could decide whether an interim review was warranted in Interim Review No. RD-2010-001, which concerned a request to exclude certain screws from China and Chinese Taipei from the Tribunal's order in Expiry Review No. RR-2009-001, dated January 6, 2010, the request was withdrawn.

Expiries

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

Expiry Activities

Expiry No.	LE-2010-001
Product	Flat hot-rolled carbon and alloy steel sheet and strip
Type of case/country	Dumping/Brazil, China, Chinese Taipei, India, South Africa and Ukraine Subsidizing/India
Date of order or notice of expiry review	December 1, 2010
Decision	Expiry review initiated
Participants	7
Pages of official record	1,500

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

On the basis of submissions from interested parties, the Tribunal was of the view that an expiry review was warranted and initiated Expiry Review No. RR-2010-001 respecting flat hot-rolled carbon and alloy steel sheet and strip.

Expiry Reviews

When the Tribunal initiates a review of 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 forwarded to all known interested parties.

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

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

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

Expiry Review Activities

Expiry Review No.	RR-2009-002	RR-2009-003	RR-2010-001
Product	Whole potatoes for use or consumption in the province of British Columbia	Refined sugar	Flat hot-rolled carbon and alloy steel sheet and strip
Type of case/country	Dumping/United States	Dumping/United States, Denmark, Germany, Netherlands and United Kingdom Subsidizing/European Union	Dumping/Brazil, China, Chinese Taipei, India, South Africa and Ukraine Subsidizing/India
Date of order	September 10, 2010	November 1, 2010	In progress
Order	Order continued	Order continued for United States Order rescinded for Denmark, Germany, Netherlands, United Kingdom and European Union	
Questionnaires sent¹	354	103	
Questionnaires received²	62	27	
Participants	2	5	
Exhibits	489	293	
Pages of official record	9,100	11,875	
Public hearing days	3	4	
Witnesses	11	13	

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 chart, during the fiscal year, the Tribunal completed two expiry reviews.

RR-2009-002—Whole Potatoes

This review concerned the dumping of whole potatoes originating in or exported from the United States.

The Tribunal sent detailed questionnaires to the 6 known domestic producers and commissions representing domestic producers, 148 of the largest importers and 200 foreign producers of the subject goods in the United States. Of the 354 questionnaires sent, 21 responses were used in the Tribunal's analysis. There were 2 participants in the expiry review, with 11 witnesses appearing before the Tribunal during 3 days of public hearing. The official record consisted of 489 exhibits, totalling 9,100 pages of documents.

On September 10, 2010, the Tribunal continued its order made on September 12, 2005, in Expiry Review No. RR-2004-006 in respect of whole potatoes imported from the United States for use or consumption in the province of British Columbia.

RR-2009-003—Refined Sugar

This review concerned the dumping of refined sugar originating in or exported from the United States, Denmark, Germany, the Netherlands and the United Kingdom and the subsidizing of refined sugar originating in or exported from the European Union.

The Tribunal sent detailed questionnaires to 2 known domestic producers, 66 of the largest importers and 35 foreign manufacturers of the subject goods in the named countries. Of the 103 questionnaires sent, 12 responses were used in the Tribunal's analysis. There were 5 participants in the expiry review, with 13 witnesses appearing before the Tribunal during 4 days of public hearing. The official record consisted of 293 exhibits, totalling 11,875 pages of documents.

On November 1, 2010, the Tribunal continued its order in respect of refined sugar from the United States. The Tribunal rescinded its order in respect of refined sugar from Denmark, Germany, the Netherlands, the United Kingdom and the European Union.

Expiry Reviews in Progress at the End of the Fiscal Year

As illustrated above, there was one expiry review in progress at the end of the fiscal year.

RR-2010-001—Flat hot-rolled carbon and alloy steel sheet and strip

This is a review of the order made on August 16, 2006, in Expiry Review No. RR-2005-002 concerning the dumping of flat hot-rolled carbon and alloy steel sheet and strip from Brazil, China, Chinese Taipei, India, South Africa and Ukraine and the subsidizing of flat hot-rolled carbon and alloy steel sheet and strip from India.

Judicial or Panel Reviews of SIMA Decisions

On February 16, 2010, the Federal Court of Appeal heard the application for judicial review filed by MAAX Bath Inc. (MAAX) and, on February 24, 2010, allowed the application in part. The Federal Court of Appeal set aside the Tribunal's decision to deny the requests for product exclusions for certain aluminum extrusions used in the assembly of shower enclosures submitted by MAAX in Inquiry No. NQ-2008-003 and referred the matter back to the Tribunal for reconsideration and re-determination in conformity with its reasons. With respect to those grounds of review that pertained directly to the Tribunal's injury findings, the Federal Court of Appeal stated that the Tribunal's conclusions had not been shown to be unreasonable and that it could detect no error in the Tribunal's reasoning. On February 10, 2011, the Tribunal determined that MAAX was entitled to the exclusions.

The following table lists Tribunal decisions under sections 43 and 76 of *SIMA* that were before the Federal Court of Appeal in the fiscal year.

Summary of Judicial or Panel Reviews

Case No.	Product	Country of Origin	Court File No./Status
NQ-2009-002	Mattress innerspring units	China	A—515—09 Application dismissed (October 28, 2010)
RR-2009-003	Refined sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	A—461—10

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.

WTO Dispute Resolutions

There were no Tribunal findings or orders before the WTO Dispute Settlement Body during the fiscal year.

SIMA Findings and Orders in Force as of March 31, 2011

During calendar year 2010, there were 20 *SIMA* findings and orders in force, affecting approximately 0.3 percent of Canadian imports, 2.3 percent of Canadian shipments and 0.8 percent of Canadian employment.

Summary of Findings and Orders in Force

Review No. or Inquiry No.	Date of Decision	Product	Type of Case/Country	Related Decision No. and Date
NQ-2006-002	February 19, 2007	Copper pipe fittings	Dumping/United States, Korea and China Subsidizing/China	
NQ-2007-001	March 10, 2008	Seamless carbon or alloy steel oil and gas well casing	Dumping and subsidizing/China	
NQ-2008-001	August 20, 2008	Carbon steel welded pipe	Dumping and subsidizing/China	
NQ-2008-002	December 11, 2008	Thermoelectric containers	Dumping and subsidizing/China	
NQ-2008-003	March 17, 2009	Aluminum extrusions	Dumping and subsidizing/China	
NQ-2009-002	November 24, 2009	Mattress innerspring units	Dumping/China	
NQ-2009-003	February 2, 2010	Hot-rolled carbon steel plate and high-strength low-alloy plate	Dumping/Ukraine	
NQ-2009-004	March 23, 2010	Oil country tubular goods	Dumping and subsidizing/China	
NQ-2010-001	October 9, 2010	Greenhouse bell peppers	Dumping/Netherlands	
RR-2005-002	August 16, 2006	Flat hot-rolled carbon and alloy steel sheet and strip	Dumping/Brazil, China, Chinese Taipei, India, South Africa and Ukraine Subsidizing/India	NQ-2001-001 (August 17, 2001)
RR-2006-001	December 10, 2007	Bicycles	Dumping/Chinese Taipei and China	RR-2002-001 (December 9, 2002) RR-97-003 (December 10, 1997) NQ-92-002 (December 11, 1992)
RR-2007-001	January 9, 2008	Hot-rolled carbon steel plate	Dumping/China	RR-2001-006 (January 10, 2003) NQ-97-001 (October 27, 1997)
RR-2007-003	July 15, 2008	Carbon steel pipe nipples and adaptor fittings	Dumping/China	RD-2006-006 (June 8, 2007) NQ-2002-004 (July 16, 2003)
RR-2008-001	December 22, 2008	Structural tubing	Dumping/Korea, South Africa and Turkey	NQ-2003-001 (December 23, 2003)
RR-2008-002	January 8, 2009	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	Dumping/Bulgaria, Czech Republic and Romania	NQ-2003-002 (January 9, 2004)
RR-2009-001	January 6, 2010	Carbon steel fasteners	Dumping/China and Chinese Taipei Subsidizing/China	NQ-2004-005 (January 7, 2005)
RR-2009-002	September 10, 2010	Whole potatoes	Dumping/United States	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-2009-003	November 1, 2010	Refined sugar	Dumping/United States	RR-2004-007 (November 2, 2005) RR-99-006 (November 3, 2000) NQ-95-002 (November 6, 1995)

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



CHAPTER IV

PROCUREMENT REVIEW

Introduction

Potential suppliers that believe that they may have been unfairly treated during a procurement solicitation covered by *NAFTA*, the *AIT*, the *AGP*, the *CCFTA* or the *CPFTA* may file a complaint with the Tribunal. However, the scheme of the relevant provisions of the *CITT Act* favours the complainant first making an attempt to resolve the issue with the government institution responsible for the procurement.

The Tribunal's role is to determine whether the government institution followed the procurement procedures and other requirements specified in *NAFTA*, the *AIT*, the *AGP*, the *CCFTA* or the *CPFTA*.

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 and all other interested parties are sent a formal notification of the complaint and a copy of the complaint itself. An official notice of the complaint is also published on MERX, Canada's electronic tendering service, and in the *Canada Gazette*. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract pending the disposition of the complaint by the Tribunal.

After receipt of its copy of the complaint, the 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 made 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 are, by statute, to be implemented to the greatest extent possible. The Tribunal may also award reasonable costs to the complainant or the responding government institution depending on the nature and circumstances of the case.

Procurement Complaints

Summary of Activities

	2009-2010	2010-2011
Number of Complaints		
Carried over from previous fiscal year	10	72
Received in fiscal year	154	94
Remanded	-	1
Total	164	167
Complaints Withdrawn or Cases Closed		
Withdrawn	7	6
Abandoned while filing	-	-
Subtotal	7	6
Inquiries Not Initiated		
Lack of jurisdiction/not a potential supplier	9	2
Late filing	22	43
Not a designated contract/no reasonable indication of a breach/premature	30	18
Subtotal	61	63
Inquiry Results		
Complaints dismissed	5	4
Complaints not valid	8	9
Complaints valid or valid in part	9	76
Decisions on remand	2	1
Inquiries ceased	-	4
Subtotal	24	94
Outstanding at End of Fiscal Year	72	4

In 2010-2011, the Department of Public Works and Government Services (PWGSC) issued approximately 16,132 contracts valued at between \$25,000 and \$2 billion each, for a total value of \$13.4 billion. The 94 complaints that the Tribunal received in the fiscal year pertained to 89 different contracts, with a total value of \$2.9 billion, representing about 0.6 percent of the total number, and 22 percent of the total value, of contracts issued by PWGSC in 2010-2011.

Summary of Selected Determinations

During the fiscal year, the Tribunal rendered decisions in 157 cases (63 decisions not to conduct an inquiry and 94 decisions in the context of inquiries). Four cases were still in progress at the end of the fiscal year. The table at the end of this chapter summarizes these activities.

Of the cases investigated by the Tribunal in carrying out its procurement review functions, certain decisions stand out because of 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 and are not intended to be of any legal value.

PR-2009-130—Valcom Consulting Group Inc.

The Tribunal considered this case on the basis of written submissions. There were 3 participants in this inquiry. The official record consisted of 31 exhibits.

The complaint was filed by Valcom Consulting Group Inc. (Valcom) concerning a procurement by PWGSC on behalf of the Department of National Defence (DND) for the provision of informatics professional services to provide support to the Canadian Forces Supply System. Valcom alleged that PWGSC changed the evaluation criteria with regard to the addressing requirements for government references after the solicitation closed.

On June 4, 2010, the Tribunal found that PWGSC unilaterally changed the evaluation criteria after the solicitation closed by relaxing the addressing requirements for government references so as to eliminate the need for a street address while insisting on a street address from all non-government references, even though the Request for Proposal (RFP) was silent on the point. The procurement was therefore not carried out in accordance with Article 506(6) of the *AIT*, Articles 1013(1)(h) and 1015(4) of *NAFTA*, and the similar provisions in the *AGP* and the *CCFTA*. The Tribunal concluded that the complaint was valid.

The Tribunal recommended that PWGSC re-evaluate all proposals received using the original requirement of the RFP, without distinction between government and non-government addresses.

PR-2010-001—Promaxis Systems Inc.

The Tribunal considered this case on the basis of written submissions. There were 3 participants in this inquiry. The official record consisted of 25 exhibits.

The complaint was filed by Promaxis Systems Inc. (Promaxis) concerning a procurement by PWGSC on behalf of DND for the provision of publication maintenance services. Promaxis alleged that PWGSC improperly declared its bid non-compliant with two mandatory technical requirements of the RFP. Promaxis alleged in particular that PWGSC improperly determined that one of Promaxis' proposed translators did not have the requisite secret security clearance.

On August 30, 2010, the Tribunal found that PWGSC's decision to declare Promaxis' bid non-compliant was consistent with the provisions of the RFP when read as a whole, rather than individually. The Tribunal determined that PWGSC's actions were not a violation of Article 506(6) of the *AIT*. This decision reconfirmed previous decisions where the Tribunal had found that procuring entities must evaluate bidders' compliance with mandatory requirements thoroughly and strictly. The Tribunal concluded that the complaint was not valid.

PR-2010-012—BRC Business Enterprises Ltd.

The Tribunal considered this case on the basis of written submissions. There were 2 participants in this inquiry. The official record consisted of 25 exhibits.

The complaint was filed by BRC Business Enterprises Ltd. (BRC) concerning a procurement by PWGSC for the supply and delivery of freestanding furniture components for the Public Service Pension Centre in Shediac, New Brunswick. BRC submitted that PWGSC failed to evaluate its proposal in accordance with the express terms of the solicitation documents and that it ignored vital information provided by BRC in connection with its proposal. According to BRC, its proposal was compliant with the requirements of the solicitation and offered the lowest price, and it therefore should have been awarded the contract. Although its proposal did not specifically mention that its furniture components contained a top-mounted crank (a mandatory requirement of the solicitation), BRC contended that that fact was available in the product literature accompanying its proposal and that PWGSC should have asked for clarification if it had any doubts.

On September 27, 2010, the Tribunal found no basis upon which to conclude that PWGSC failed to make a reasonable evaluation of BRC's proposal or that it unfairly deemed the proposal non-compliant. The Tribunal reiterated its position that the onus is on the bidder to ensure that its proposal accurately states its intent. The Tribunal concluded that the complaint was not valid.

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-2008-048	Almon Equipment Limited	Attorney General of Canada	A—298—09 Application allowed (July 20, 2010)
		Almon Equipment Limited	A—299—09 Application allowed (July 20, 2010)
PR-2009-044 and PR-2009-045	1091847 Ontario Ltd.	1091847 Ontario Ltd.	A—447—09
PR-2009-080 to PR-2009-087, PR-2009-092 to PR-2009-099, PR-2009-101 and PR-2009-102, PR-2009-104 to PR-2009-107, PR-2009-109 to PR-2009-117, PR-2009-119 and PR-2009-120, and PR-2009-122 to PR-2009-128	Enterasys Networks of Canada Ltd.	Attorney General of Canada	A—264—10
PR-2009-132 to PR-2009-153	Enterasys Networks of Canada Ltd.	Attorney General of Canada	A—312—10
PR-2010-004 to PR-2010-006	Enterasys Networks of Canada Ltd.	Attorney General of Canada	A—321—10
PR-2010-024 to PR-2010-045	Enterasys Networks of Canada Ltd.	Enterasys Networks of Canada Ltd.	A—328—10 Application discontinued (March 17, 2011)
PR-2010-047 and PR-2010-48	Enterasys Networks of Canada Ltd.	Enterasys Networks of Canada Ltd.	A—365—10 Application discontinued (March 17, 2011)
PR-2010-049, PR-2010-050 and PR-2010-056 to PR-2010-058	Siemens Enterprise Communications Inc.	Attorney General of Canada	A—39—11
PR-2010-053 to PR-2010-055	Enterasys Networks of Canada Ltd.	Enterasys Networks of Canada Ltd.	A—465—10 (formerly T—1718—10) Application discontinued (March 17, 2011)
<p>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.</p>			

Disposition of Procurement Complaints

File No.	Complainant	Status/Decision
PR-2008-048R	Almon Equipment Limited	Decision rendered on March 1, 2011 Complaint valid in part
PR-2009-064	Krista Dunlop & Associates Inc.	Decision rendered on April 14, 2010 Complaint valid in part
PR-2009-066	Halkin Tool Limited	Decision rendered on May 3, 2010 Complaint valid in part
PR-2009-077	Avalon Controls Ltd.	Decision rendered on April 28, 2010 Complaint not valid
PR-2009-080	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-081	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-082	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-083	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-084	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-085	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-086	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-087	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-088	Adware Promotions Inc., Canadian Spirit Inc., Contractual Joint Venture	Decision rendered on June 15, 2010 Complaint valid in part
PR-2009-092	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-093	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-094	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-095	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-096	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-097	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-098	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-099	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-100	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint not valid
PR-2009-101	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-102	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-104	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-105	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-106	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2009-107	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-108	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint dismissed
PR-2009-109	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-110	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-111	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-112	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-113	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-114	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-115	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-116	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-117	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-118	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint dismissed
PR-2009-119	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-120	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-121	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint dismissed
PR-2009-122	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-123	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-124	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-125	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-126	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-127	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-128	Enterasys Networks of Canada Ltd.	Decision rendered on June 21, 2010 Complaint valid in part
PR-2009-130	Valcom Consulting Group Inc.	Decision rendered on June 4, 2010 Complaint valid
PR-2009-132	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-133	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-134	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-135	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2009-136	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-137	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-138	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-139	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-140	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-141	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-142	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-143	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-144	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-145	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-146	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-147	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-148	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-149	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-150	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-151	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-152	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-153	Enterasys Networks of Canada Ltd.	Decision rendered on August 9, 2010 Complaint valid in part
PR-2009-154	Forrest Green Resource Management Corp.	Decision rendered on August 12, 2010 Complaint not valid
PR-2010-001	Promaxis Systems Inc.	Decision rendered on August 30, 2010 Complaint not valid
PR-2010-002	Zylog Systems (Ottawa) Ltd.	Decision rendered on April 28, 2010 No reasonable indication of a breach
PR-2010-003	Innovative Response Marketing Inc.	Decision rendered on April 29, 2010 Not a designated contract
PR-2010-004	Enterasys Networks of Canada Ltd.	Decision rendered on September 10, 2010 Complaint valid in part
PR-2010-005	Enterasys Networks of Canada Ltd.	Decision rendered on September 10, 2010 Complaint valid in part
PR-2010-006	Enterasys Networks of Canada Ltd.	Decision rendered on September 10, 2010 Complaint valid in part
PR-2010-007	168446 Canada inc. (Delta Partners)	Decision rendered on July 27, 2010 Complaint not valid
PR-2010-008	Dendron Resource Surveys Inc.	Decision rendered on July 28, 2010 Complaint not valid

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2010-009	GPC Labworks Ltd.	Complaint withdrawn May 13, 2010
PR-2010-010	KB Enterprises LLC	Decision rendered on May 12, 2010 No reasonable indication of a breach
PR-2010-011	Marathon Watch Company Ltd.	Decision rendered on May 19, 2010 No reasonable indication of a breach
PR-2010-012	BRC Business Enterprises Ltd.	Decision rendered on September 27, 2010 Complaint not valid
PR-2010-013	OC Tanner Canada	Decision rendered on May 18, 2010 Late filing
PR-2010-014	Zylog Systems (Ottawa) Ltd.	Decision rendered on June 29, 2010 Complaint dismissed
PR-2010-015	Corporate Special Events Catering Inc., d.b.a. BBQ Catering	Decision rendered on June 3, 2010 Not a designated contract
PR-2010-016	CTC TrainCanada@	Decision rendered on June 14, 2010 Late filing
PR-2010-017	Esper Consulting Inc.	Decision rendered on July 20, 2010 Late filing
PR-2010-018	Les Entreprises Électriques Yvan Dubuc Ltée	Decision rendered on July 20, 2010 No reasonable indication of a breach
PR-2010-019	Kem Inc.	Decision rendered on July 28, 2010 Late filing
PR-2010-020	Titan Inflatables Ltd.	Decision rendered on July 28, 2010 Late filing
PR-2010-021	HHRM Consultants Incorporated	Complaint withdrawn on September 14, 2010
PR-2010-022	Flint Packaging Products Ltd.	Decision rendered on August 4, 2010 Late filing
PR-2010-023	Navistar Defence Canada, Inc.	Decision rendered on August 9, 2010 No reasonable indication of a breach
PR-2010-024	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-025	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-026	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-027	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-028	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-029	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-030	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-031	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-032	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-033	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-034	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-035	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-036	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2010-037	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-038	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-039	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-040	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-041	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-042	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-043	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-044	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-045	Enterasys Networks of Canada Ltd.	Decision rendered on August 17, 2010 Late filing
PR-2010-046	Falconry Concepts	Decision rendered on December 29, 2010 Complaint not valid
PR-2010-047	Enterasys Networks of Canada Ltd.	Decision rendered on August 20, 2010 Late filing
PR-2010-048	Enterasys Networks of Canada Ltd.	Decision rendered on August 20, 2010 Late filing
PR-2010-049	Siemens Enterprise Communications Inc., formerly Enterasys Networks of Canada Ltd.	Decision rendered on December 23, 2010 Complaint valid in part
PR-2010-050	Siemens Enterprise Communications Inc., formerly Enterasys Networks of Canada Ltd.	Decision rendered on December 23, 2010 Complaint valid in part
PR-2010-051	Hatehof Ltd.	Decision rendered on August 23, 2010 No reasonable indication of a breach
PR-2010-052	Bee-Clean Building Maintenance	Decision rendered on August 23, 2010 No reasonable indication of a breach
PR-2010-053	Enterasys Networks of Canada Ltd.	Decision rendered on September 1, 2010 Late filing
PR-2010-054	Enterasys Networks of Canada Ltd.	Decision rendered on September 1, 2010 Late filing
PR-2010-055	Enterasys Networks of Canada Ltd.	Decision rendered on September 1, 2010 Late filing
PR-2010-056	Siemens Enterprise Communications Inc., formerly Enterasys Networks of Canada Ltd.	Decision rendered on December 23, 2010 Complaint valid in part
PR-2010-057	Siemens Enterprise Communications Inc., formerly Enterasys Networks of Canada Ltd.	Decision rendered on December 23, 2010 Complaint valid in part
PR-2010-058	Siemens Enterprise Communications Inc., formerly Enterasys Networks of Canada Ltd.	Decision rendered on December 23, 2010 Complaint valid in part
PR-2010-059	Construction et gestion J.C.C. Inc.	Decision rendered on September 9, 2010 Late filing
PR-2010-060	PricewaterhouseCoopers LLP	Decision rendered on September 10, 2010 Late filing
PR-2010-061	GlaxoSmithKline Inc.	Complaint withdrawn on October 15, 2010
PR-2010-062	PRAXES Emergency Specialists Inc.	Decision rendered on September 14, 2010 Lack of jurisdiction
PR-2010-063	ABCO Industries Limited	Decision rendered on September 16, 2010 Late filing

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2010-064	Siva & Associates Inc.	Decision rendered on September 15, 2010 Not a designated contract
PR-2010-065	Bayshore Healthcare Ltd. dba Bayshore Home Health	Decision rendered on October 7, 2010 Not a designated contract
PR-2010-066	Quantum Energetics Inc.	Decision rendered on October 1, 2010 Complaint premature
PR-2010-067	CIDE Inc.	Decision rendered on October 5, 2010 Late filing
PR-2010-068	Enterasys Networks of Canada Ltd.	Inquiry ceased
PR-2010-069	Enterasys Networks of Canada Ltd.	Inquiry ceased
PR-2010-070	Navair Technologies Inc.	Decision rendered on October 20, 2010 Not a designated contract
PR-2010-071	1091847 Ontario Ltd.	Decision rendered on January 27, 2011 Complaint valid
PR-2010-072	J-Mar Canada Inc.	Complaint withdrawn on November 22, 2010
PR-2010-073	Mediamix Interactive Inc.	Decision rendered on November 17, 2010 Not a designated contract
PR-2010-074	AdVenture Marketing Solutions Inc.	Decision rendered on March 31, 2011 Complaint valid
PR-2010-075	1091847 Ontario Ltd.	Decision rendered on November 24, 2010 Not a potential supplier
PR-2010-076	d2k Communications	Decision rendered on November 26, 2010 Late filing
PR-2010-077	Dataintro Software Limited	Decision rendered on December 1, 2010 Late filing
PR-2010-078	Accipiter Radar Technologies Inc.	Decision rendered on February 17, 2011 Complaint not valid
PR-2010-079	RESON, Inc.	Complaint withdrawn on February 9, 2011
PR-2010-080	Information Builders (Canada) Inc.	Decision rendered on December 21, 2010 Not a designated contract
PR-2010-081	Tyco International of Canada o/a SimplexGrinnell	Inquiry ceased
PR-2010-082	MDA Systems Ltd.	Decision rendered on January 13, 2011 Not a designated contract
PR-2010-083	Esper Consulting Inc.	Decision rendered on January 21, 2011 Late filing
PR-2010-084	DetNorkse Veritas (Canada) Ltd.	Inquiry ceased
PR-2010-085	ROI Resources Inc./Evans Consoles	Decision rendered on February 3, 2011 No reasonable indication of a breach
PR-2010-086	Entreprise Marissa Inc.	Accepted for inquiry
PR-2010-087	Kelowna Flightcraft CATS Limited Partnership	Complaint withdrawn on March 17, 2011
PR-2010-088	3056058 Canada Inc.	Accepted for inquiry
PR-2010-089	3202488 Canada Inc. o/a Kinetic Solutions	Decision rendered on February 18, 2011 No reasonable indication of a breach
PR-2010-090	Opsis, Gestion d'infrastructures Inc.	Accepted for inquiry
PR-2010-091	W. Davis	Decision rendered on March 15, 2011 Late filing
PR-2010-092	The Typhon Group (Barrie) Limited	Decision rendered on March 28, 2011 Late filing
PR-2010-093	S.i. Systems Ltd.	Decision rendered on March 22, 2011 Late filing
PR-2010-094	Cauffiel Technologies Corporation	Under consideration



CHAPTER V

APPEALS

Introduction

The Tribunal hears appeals from decisions of the CBSA under the *Customs Act* and *SIMA* or of the Minister of National Revenue under the *Excise Tax Act*. Appeals under the *Customs Act* relate to the origin, tariff classification, value for duty or marking of goods imported into Canada. Appeals under *SIMA* concern the application, to imported goods, of a Tribunal finding or order concerning dumping or subsidizing and the normal value, export price or subsidy of 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 Secretary of the Tribunal within the time limit specified in the act under which the appeal is made. The Tribunal strives to be informal and accessible. However, there are certain procedures and time constraints that are imposed by law and by the *Rules*.

Rules

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

The respondent must also comply with time and procedural constraints. 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 Secretary of the Tribunal then contacts both parties in order to schedule a hearing. 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 complexity and precedential nature of the matter at issue, appeals will be heard by a panel of one or three members. Persons may intervene in an appeal by 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, by way of videoconference 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 of justice, 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 tries to issue a decision on the matters in dispute, including the reasons for the decision.

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

Extensions of Time

Under section 60.2 of the *Customs Act*, a person may apply to the Tribunal for an extension of time to file a request for a re-determination or a further re-determination with the President of the CBSA. Such an application may be granted by the Tribunal after either the President has refused an application under section 60.1 or 90 days have elapsed after the application was made and the person has not been notified of the President's decision. Under section 67.1, a person may make an application to the Tribunal for an extension of time within which to file a notice of appeal with the Tribunal. During the fiscal year, the Tribunal issued four orders under the *Customs Act* granting extensions of time. There were four requests under the *Customs Act* that were outstanding at the end of the fiscal year.

Under section 81.32 of the *Excise Tax Act*, a person may apply to the Tribunal for an extension of time 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 issued three orders under the *Excise Tax Act* granting extensions of time. There were no requests under the *Excise Tax Act* that were outstanding at the end of the fiscal year.

Appeals Received and Heard

During the fiscal year, the Tribunal received 70 appeals, not counting an appeal that was received on remand from the Federal Court of Appeal for decision. The Tribunal heard 26 appeals, all under the *Customs Act*. It issued decisions on 31 appeals, which consisted of 29 appeals under the *Customs Act* and 2 under the *Excise Tax Act*. Eighty-two appeal cases were outstanding at the end of the fiscal year.

Appeals Before the Tribunal in Fiscal Year

Appeal No.	Appellant	Date of Decision	Status/Decision
<i>Customs Act</i>			
AP-2006-023	Fritz Marketing Inc.	May 10, 2010	Appeal dismissed
AP-2008-011	Sarstedt Canada Inc.	April 30, 2010	Appeal allowed in part
AP-2008-012R	P.L. Light Systems Canada		In progress
AP-2008-019	Dorel Industries Inc.	May 18, 2010	Appeal withdrawn
AP-2008-022	Globe Electric Co. Inc.	April 16, 2010	Appeal dismissed
AP-2008-028	Cherry Stix Ltd.	May 10, 2010	Appeal allowed
AP-2009-003	CapsCanada [®] Corporation	July 2, 2010	Appeal dismissed
AP-2009-004	Wolseley Canada Inc.	January 18, 2011	Appeal dismissed
AP-2009-005	Les pièces d'auto Transit Inc.	July 28, 2010	Appeal dismissed
AP-2009-007	Sanus Systems	July 8, 2010	Appeal allowed
AP-2009-008	Wolseley Canada Inc.		Postponed
AP-2009-009	Nicholson and Cates Limited	July 6, 2010	File closed
AP-2009-012	S.F. Marketing Inc.	June 2, 2010	Appeal dismissed
AP-2009-013	Kvemeland Group North America Inc.	April 30, 2010	Appeal dismissed
AP-2009-014	Transport Desgagnés Inc.		In progress
AP-2009-016	Tara Materials, Inc.	August 3, 2010	Appeal dismissed
AP-2009-017	Nutricia North America		In progress
AP-2009-019	Canadian Tire Corporation Ltd.	August 6, 2010	Appeal dismissed
AP-2009-044	Baldor Electric Canada Inc.	June 14, 2010	Appeal withdrawn
AP-2009-045	Sher-wood Hockey Inc.	February 10, 2011	Appeal dismissed
AP-2009-046	Igloo Vikski Inc.		Postponed
AP-2009-047	S.F. Marketing Inc.	June 2, 2010	Appeal dismissed
AP-2009-049	Evenflo Canada Inc.	May 19, 2010	Appeal allowed
AP-2009-050	Fruit of the Loom Canada, Inc.	February 9, 2011	Appeal withdrawn
AP-2009-052	A.M.A. Plastics Ltd.	September 23, 2010	Appeal allowed
AP-2009-054	Loblaw Companies Ltd.	August 25, 2010	Appeal withdrawn
AP-2009-055	Jeno Neuman et Fils Inc.	August 10, 2010	Appeal withdrawn
AP-2009-056	Future Product Sales Inc.	July 8, 2010	Appeal allowed
AP-2009-057	Leeza Distribution Inc.	August 17, 2010	Appeal dismissed
AP-2009-058	Jeno Neuman et Fils Inc.	August 10, 2010	Appeal withdrawn
AP-2009-059	Evenflo Canada Inc.	June 24, 2010	Appeal withdrawn
AP-2009-060	Rona Corporation	April 22, 2010	Appeal withdrawn
AP-2009-061	Criterion Catalysts & Technologies Canada Inc.	November 15, 2010	Appeal dismissed
AP-2009-063	Dorel Distribution Canada	September 3, 2010	Appeal withdrawn
AP-2009-064	Pexcor Manufacturing Company Ltd.		Postponed
AP-2009-065	Mathews Equipment Limited		Postponed
AP-2009-066	Danson Decor Inc.		In progress
AP-2009-067	Norcan Petroleum Inc.		Postponed
AP-2009-068	Sansivar Importing and Distributing	July 27, 2010	Appeal withdrawn
AP-2009-069	S. Guyatt	November 9, 2010	Appeal dismissed
AP-2009-070	Chariot Carriers Inc.	September 27, 2010	Appeal withdrawn
AP-2009-071	BMC Coaters Inc.	December 6, 2010	Appeal dismissed
AP-2009-072	Rona Corporation Inc.	February 15, 2011	Appeal dismissed
AP-2009-073	Ingram Micro Inc.	January 25, 2011	Appeal allowed

Appeals Before the Tribunal in Fiscal Year (cont'd)

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2009-074	Sears Canada Inc.	October 25, 2010	Appeal withdrawn
AP-2009-076	Rutherford Controls International Corp.	January 26, 2011	Appeal dismissed
AP-2009-077	Hasbro Canada Corporation	June 25, 2010	Appeal withdrawn
AP-2009-078	Disco-Tech Industries Inc.		In progress
AP-2009-079	C. Kenney	July 26, 2010	Appeal withdrawn
AP-2009-080	M. Miner	January 20, 2011	Appeal allowed
AP-2009-081	Disco-Tech Industries Inc.		In progress
AP-2010-001	Micronutrition Pileje Inc.	November 12, 2010	Appeal withdrawn
AP-2010-002	Frito-Lay Canada, Inc.		Postponed
AP-2010-003	Rui Royal International Corp.	March 30, 2011	Appeal dismissed
AP-2010-004	Nestle Canada Inc.	February 23, 2011	Appeal withdrawn
AP-2010-005	HBC Imports c/o Zellers Inc.		In progress
AP-2010-006	Komatsu International (Canada) Inc.		Postponed
AP-2010-007	C.B. Powell Limited	August 11, 2010	Appeal dismissed
AP-2010-008	C.B. Powell Limited	August 11, 2010	Appeal dismissed
AP-2010-009	Dollarama S.E.C.	November 9, 2010	Appeal withdrawn
AP-2010-010	Raymond Industrial Equipment Limited	November 2, 2010	Appeal withdrawn
AP-2010-011	G C P Elastomeric Inc.		In progress
AP-2010-012	Oceanex Inc.	November 17, 2010	Appeal withdrawn
AP-2010-013	A. Gillis	March 21, 2011	Appeal withdrawn
AP-2010-014	Massive Prints, Inc.		In progress
AP-2010-015	Rona Corporation Inc.	November 26, 2010	Appeal withdrawn
AP-2010-016	R. A. Hayes		In progress
AP-2010-017	Steris Corporation Inc.	June 25, 2010	File closed
AP-2010-019	HBC Imports c/o Zellers Inc.		In progress
AP-2010-020	Jeno Neuman et Fils Inc.	October 14, 2010	Appeal withdrawn
AP-2010-021	Casio Canada Ltd.	February 16, 2011	Appeal withdrawn
AP-2010-022	Loblaw Companies Limited		In progress
AP-2010-023	Lestika Inc.	September 2, 2010	Appeal withdrawn
AP-2010-024	Ulextra Inc.		In progress
AP-2010-025	Masai Canada Limited		In progress
AP-2010-026	Superior Glove Works Limited		Postponed
AP-2010-027	Kinedyne Canada Limited		In progress
AP-2010-028	J. Le	July 15, 2010	File closed
AP-2010-029	Terralink Horticulture Inc.		Postponed
AP-2010-030	Fabtrends Knit Co. Inc.	February 17, 2011	Appeal withdrawn
AP-2010-031	Volpak Inc.	November 8, 2010	Appeal dismissed
AP-2010-032	Wellmaster Pipe and Supply Inc.		Postponed
AP-2010-033	Contech Holdings Canada Inc.		In progress
AP-2010-034	Olympic International Agencies Inc.	February 7, 2011	Appeal withdrawn
AP-2010-035	Wal-Mart Canada Corporation		In progress
AP-2010-036	Accessoires Sporttracks Inc. de Thule Canada Inc.		In progress
AP-2010-037	Great West Van Conversions Inc.		In progress
AP-2010-038	Synnex Canada Ltd.	December 3, 2010	Appeal withdrawn

Appeals Before the Tribunal in Fiscal Year (cont'd)

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2010-040	Équipement Loadmaster Ltée		In progress
AP-2010-041	Royal Canadian Mint		In progress
AP-2010-042	Contech Holdings Canada Inc.		Postponed
AP-2010-043	Canadian Tire Corporation Ltd.		In progress
AP-2010-044	Wolseley Canada Inc.	January 7, 2011	Appeal withdrawn
AP-2010-045	R. Bell	March 17, 2011	Appeal withdrawn
AP-2010-046	VGI Village Green Imports		In progress
AP-2010-047	Triple E Canada Ltd.		Postponed
AP-2010-048	Pleasure-Way Industries Ltd.		Postponed
AP-2010-049	Leisure Travel Vanx (1999) Ltd.		Postponed
AP-2010-050	J.M. Goldberg	December 6, 2010	File closed
AP-2010-051	T. Swiatek	January 25, 2011	Appeal withdrawn
AP-2010-052	H. A. Kidd And Company Limited		In progress
AP-2010-053	North American Tea and Coffee Inc.		In progress
AP-2010-054	Yamaha Canada Music Ltd.		In progress
AP-2010-055	Tyco Safety Products Canada Ltd. (formerly Digital Security Controls Ltd.)		In progress
AP-2010-056	Dole Foods of Canada Ltd.		In progress
AP-2010-057	RLogistics LP		In progress
AP-2010-058	9133-7048 Quebec Inc.		In progress
AP-2010-059	Dollarama S.E.C.		Postponed
AP-2010-060	Outdoor Gear Canada		In progress
AP-2010-061	M. Farid		In progress
AP-2010-062	Irwin Naturals		In progress
AP-2010-064	Automed Technologies (Canada) Inc.		In progress
AP-2010-065	Beckman Coulter Canada Inc.		In progress
AP-2010-066	CE Franklin Ltd.		In progress
AP-2010-067	R. Falk		In progress
AP-2010-068	Kwality Imports		In progress
AP-2010-069	Canadian Tire Corporation Limited		In progress
AP-2010-070	Cambridge Brass Inc.		In progress
Excise Tax Act			
AP-2008-030	Arnold Bros. Transport Ltd. and Bison Transport Inc.	April 30, 2010	Appeal dismissed
AP-2009-020	Laidlaw Carriers PSC Inc.		Postponed
AP-2009-021	Laidlaw Carriers Bulk GP Inc.		Postponed
AP-2009-022	Laidlaw Carriers Van GP Inc.		Postponed
AP-2009-023	Laidlaw Carriers Flatbed GP Inc.		Postponed
AP-2009-024	Transnat Express Inc.		Postponed
AP-2009-025	Golden Eagle Express Inc.		Postponed
AP-2009-026	Le Groupe G3 Inc.		Postponed
AP-2009-027	Vedder Transport Ltd.		Postponed
AP-2009-028	Warren Gibson Ltd.		Postponed
AP-2009-029	2810026 Canada Ltd.		Postponed
AP-2009-030	Warren Gibson Ltd.		Postponed
AP-2009-031	Q-Line Trucking Ltd.		Postponed

Appeals Before the Tribunal in Fiscal Year (cont'd)

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2009-032	GST 2000 Inc.		Postponed
AP-2009-033	J & F Trucking Corporation		Postponed
AP-2009-034	Reimer Express Lines Ltd.		Postponed
AP-2009-035	Celadon Canada Inc.		Postponed
AP-2009-036	Cobra Trucking Ltd.		Postponed
AP-2009-037	MotruX Inc.		Postponed
AP-2009-038	L.E. Walker Transport Ltd.		Postponed
AP-2009-039	Distribution Marcel Dion Inc.		Postponed
AP-2009-040	Reimer Express Lines Ltd.		Postponed
AP-2009-041	Direct Integrated Transportation		Postponed
AP-2009-042	Harris Transport Ltd.		Postponed
AP-2009-043	Benson Tank Lines Ltd.		Postponed
AP-2009-048	Arnold Bros. Transport Ltd. and Bison Transport Inc.	April 30, 2010	Appeal dismissed
<i>Special Import Measures Act</i>			
AP-2010-018	Amcan Jumax Inc.		In progress
AP-2010-039	BMI Canada Inc.		In progress
AP-2010-063	Toyota Tshusho America, Inc.		In progress

Summary of Selected Decisions

Of the many cases heard by the Tribunal, several decisions stand out, either because of the particular nature of the product in issue or because of the legal significance of the case. Specifically, there are three main categories of appeals under the *Customs Act*: tariff classification, value for duty and rules of origin. Brief summaries of a representative sample of such decisions follow, the four appeals having been heard under the *Customs Act*. These summaries have been prepared for general information purposes only and are intended to be of no legal value.

AP-2008-028—Cherry Stix Ltd. v. President of the Canada Border Services Agency

As part of this appeal, the Tribunal held a one-day public hearing in Ottawa. There were 2 participants in the appeal, and 1 witness appeared before the Tribunal. The official record consisted of 29 exhibits.

This was an appeal pursuant to subsection 67(1) of the *Customs Act* from a decision of the CBSA made pursuant to subsection 60(4) concerning the value for duty of various styles and colours of women's T-shirts imported by Cherry Stix Ltd. (Cherry Stix) and sold to Wal-Mart. The issue in this appeal was whether the CBSA was correct in applying the transaction value to determine the value for duty of the goods in issue. The transaction value is the price paid or payable for the goods, subject to some adjustments required by the *Customs Act*.

The Tribunal considered the following three statutory conditions that must be met before the transaction value can be used to appraise the value for duty: (1) there must be a sale for export; (2) there must be a purchaser in Canada; and (3) the price paid or payable must be ascertainable. Only the first condition, whether there was a sale for export, was in dispute.

The CBSA urged the Tribunal to examine the “commercial realities” of the arrangements between Cherry Stix, the importer, and Wal-Mart, the eventual purchaser. The CBSA argued that the true intention of Cherry Stix and Wal-Mart was manifest in their blanket order agreement, which covered the price, quantity and delivery dates of the items. The CBSA also argued, although without providing evidence, that Parliament’s intent was that the transaction method should be the primary method of appraisal.

Cherry Stix argued that the blanket order could not be a sale for export because there was no sale, only an agreement to sell. Cherry Stix argued that, for a sale to take place, there would have to be a transfer of title and that Wal-Mart only took title to the goods when they were delivered by Cherry Stix to Wal-Mart’s warehouse in Canada.

The Tribunal carefully examined the whole array of contractual documents between Cherry Stix and Wal-Mart, as well as the conduct of the parties, with a view to determining when they intended the title to transfer from one to the other.

On May 10, 2010, the Tribunal concluded that the completion of the sale and, therefore, the transfer of title to the goods in issue did not occur until Wal-Mart had placed its purchase order with Cherry Stix and accepted delivery of the goods, which was after the goods had been imported into Canada. The Tribunal determined that there was therefore no “sale for export” between Cherry Stix and Wal-Mart; therefore, the transaction value method was not applicable in this case. Accordingly, the appeal was allowed.

AP-2009-003—CapsCanada[®] Corporation v. President of the Canada Border Services Agency

As part of this appeal, the Tribunal held a one-day public hearing in Ottawa. There were 2 participants in the appeal, and 5 witnesses appeared before the Tribunal. The official record consisted of 30 exhibits.

This was an appeal pursuant to subsection 67(1) of the *Customs Act* from a decision of the CBSA made pursuant to subsection 60(4), concerning a request for a re-determination. The issue in this appeal was whether K-CAPS[®], imported by CapsCanada[®] Corporation (CapsCanada), were properly classified under tariff item No. 3923.90.90 as other articles of plastics for the conveyance or packing of goods, as determined by the CBSA, or should have been classified under tariff item No. 9602.00.10 as gelatin capsules for pharmaceutical products, worked, unhardened gelatin (except gelatin of heading No. 35.03), as claimed by CapsCanada.

The Tribunal noted that the goods in issue were “articles” and that, according to the terms of the heading in the nomenclature, they were used “to convey goods”, on the basis of the evidence that showed that they delivered, carried, transmitted or transferred, orally, a single dosage of an active pharmaceutical ingredient (i.e. medicine) into the human body. Furthermore, the Tribunal found that the goods in issue met the definition of “plastics”. The Tribunal heard testimony that the goods in issue were made of hydroxypropyl methylcellulose (HPMC), a chemical derivative of cellulose extracted from softwood pulp. The evidence showed that HPMC is a “synthesized” product, a “polymer”, capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence, such as heat and pressure in this case. Therefore, the Tribunal found that the goods in issue were *prime facie* classifiable under tariff item No. 3923.90.90.

In consideration of tariff item No. 9602.00.10, and on the basis of the evidence on the record, the Tribunal determined that the term “gelatin” refers to a substance derived from animal materials, and the Tribunal noted that the goods in issue were made of HPMC, a cellulose ether. Therefore, the Tribunal found that the goods in issue were not “. . . worked, unhardened gelatin (except gelatin of heading 35.03) and articles of unhardened gelatin.” The Tribunal also found that, by virtue of their composition, that is, HPMC, the goods in issue did not qualify as “[w]orked vegetable or mineral carving materials and articles of these materials”, nor did they qualify as “moulded or carved articles of . . . natural gums or natural resins or of modelling pastes, and other moulded or carved articles, not elsewhere specified or included”. The Tribunal noted that the goods in issue were not made from natural resins, in light of the fact that HPMC is a synthesized product, and that they were not moulded articles of various materials not specified or included in other headings of the nomenclature because the Tribunal determined that they were *prime facie* classifiable in heading No. 39.26.

Consequently, it was the Tribunal’s view that the goods in issue should be regarded as plastic articles for the conveyance of goods, as determined by the CBSA. Accordingly, the appeal was dismissed.

AP-2009-016—Tara Materials, Inc. v. President of the Canada Border Services Agency

As part of this appeal, the Tribunal held a one-day public hearing in Ottawa. There were 2 participants in the appeal, and 2 witnesses appeared before the Tribunal. The official record consisted of 27 exhibits.

This was an appeal pursuant to subsection 67(1) of the *Customs Act* from a decision of the CBSA made pursuant to subsection 60(4). The issue in this appeal was whether the totality of the finished artist canvases exported from the United States to Canada by Tara Materials, Inc. (Tara) were entitled to the benefit of the United States Tariff, as claimed by Tara, or whether only 72 percent of the goods in issue were entitled to such preferential treatment, as determined by the CBSA. Entitlement to the benefit of the United States Tariff, in this appeal, depended entirely on whether the finished artist canvases were determined to be originating goods.

The disagreement between the parties stemmed from their diverging views regarding the manner in which the provisions of the *NAFTA Rules of Origin Regulations* pertaining to the inventory management methods of fungible materials and fungible goods were to be interpreted and applied. The Tribunal found that paragraphs 7(16)(a) and (b) were not mutually exclusive and must be read together. In this instance, the Tribunal decided that both paragraphs were applicable and that, while the parties had agreed that the conditions necessary for the application of paragraph 7(16)(a) were present, the conditions necessary for the application of paragraph 7(16)(b) were also present. The Tribunal found that the finished artist canvases met the definition of fungible goods, that they were physically combined or mixed in inventory and that they did not undergo production or any other operation prior to their exportation. Therefore, in accordance with paragraph 7(16)(b), it was necessary for Tara to choose an inventory management method in order to determine whether its finished artist canvases were originating goods. In addition, the Tribunal found that subsection 7(16.1) was applicable, because the fungible materials and fungible goods had been withdrawn from the same inventory. Subsequently, the Tribunal found that the inventory management method to be used for the fungible goods had to be the same as the inventory management method used for the fungible materials. As Tara had used the average inventory management method for its fungible materials, and the CBSA had determined that 72 percent of the fungible materials used to produce the finished artist canvases qualified as originating goods, it followed that 72 percent of the finished artist canvases also qualified as originating goods.

On August 3, 2010, the Tribunal found that the CBSA was correct in determining that only 72 percent of the finished artist canvases were entitled to the benefit of the United States Tariff. Accordingly, the appeal was dismissed.

AP-2009-080—M. Miner v. President of the Canada Border Services Agency

As part of this appeal, the Tribunal held a one-day file hearing by way of written submissions in accordance with rules 25 and 25.1 of the *Canadian International Trade Tribunal Rules*. There were 2 participants in the appeal. The official record consisted of 12 exhibits.

This was an appeal pursuant to subsection 67(1) of the *Customs Act* from a decision of the CBSA made pursuant to subsection 60(4). The issue in this appeal was whether two wooden tubes that had been detained by the CBSA were properly classified under tariff item No. 9898.00.00 of the schedule to the *Customs Tariff* as prohibited weapons. In order to determine if the goods were classifiable under this tariff item, the Tribunal had to determine whether they met the definition of weapon and prohibited weapon under subsection 84(1) of the *Criminal Code*. Specifically, the Tribunal had to determine whether the goods were prescribed as being prohibited weapons in *Former Prohibited Weapons Order, No. 6*, that is, devices commonly known as “Yaqua Blowguns”, being tubes or pipes designed for the purpose of shooting arrows or darts by the breath, and any similar devices.

In this appeal, the Tribunal examined the text of *Former Prohibited Weapons Order, No. 6* and was guided by the canons of statutory interpretation. The Tribunal noted that the term “Yaqua Blowgun” had been specifically chosen by the legislature when adopting the provisions; however, no evidence had been submitted as to what constituted the “Yaqua” qualities of such a device. Furthermore, no evidence had been submitted as to the functionality of the goods, and contradictory arguments were submitted as to whether the goods had been designed for the purpose of shooting arrows or darts by the breath. The Tribunal was also unable to determine if the goods were devices similar to the “Yaqua Blowgun”, as that device had not been clearly identified. In addition, the Tribunal noted that the CBSA had presented no technical or functional evidence or expertise as to the two wooden tubes in order for the Tribunal to determine whether the goods met the definition of a weapon, as defined in the *Criminal Code*.

In reaching its decision, the Tribunal was mindful of Parliament’s overarching objective of prohibiting the importation of dangerous devices, but ultimately, could not determine that the goods met the definition of “Yaqua Blowgun” provided by the legislation. Accordingly, on January 20, 2011, the Tribunal found that the goods in issue did not meet the definition of a weapon or prohibited weapon. Subsequently, they were not classifiable as prohibited weapons and did not fall under the prohibition set out in section 136 of the *Customs Tariff*. The appeal was therefore allowed.

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-2002-007	King West Communications Inc.	King West Communications Inc.	T—1335—03 File closed (September 3, 2010)
AP-2002-008	The Russo Group Inc.	The Russo Group Inc.	T—1332—03 File closed (September 3, 2010)
AP-2007-024	1068827 Ontario Inc. o/a Grace Motors	1068827 Ontario Inc. o/a Grace Motors	A—621—08 (became T—407—09) Appeal dismissed (January 13, 2011) A—66—11
AP-2007-028	Automed Technologies Inc.	Automed Technologies Inc.	A—279—09 Appeal dismissed (September 21, 2010)
AP-2008-012	P.L. Light Systems Canada Inc.	President of the Canada Border Services Agency	A—497—09 Appeal allowed (September 9, 2010)
AP-2009-010	Wolseley Engineered Pipe Group Wolseley Engineered Pipe Group	Wolseley Engineered Pipe Group President of the Canada Border Services Agency	A—223—10 A—226—10 Appeal discontinued (June 17, 2010)
AP-2009-013	Kvemeland Group North America Inc.	Kvemeland Group North America Inc.	A—194—10 Appeal dismissed (March 21, 2011)
AP-2009-005	Les pièces d'auto Transit Inc.	Les pièces d'auto Transit Inc.	A—291—10
AP-2009-016	Tara Materials, Inc.	Tara Materials, Inc.	A—389—10
AP-2009-019	Canadian Tire Corporation Limited	Canadian Tire Corporation Limited	A—324—10
AP-2010-007 and AP-2010-008	C.B. Powell Limited	C.B. Powell Limited	A—314—10

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



CHAPTER VI

STANDING TEXTILE REFERENCE

Introduction

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

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

During fiscal year 2010-2011, the Tribunal received no requests for tariff relief and did not issue any reports to the Minister of Finance.

Scope of the Reference

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

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

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several partial or complete tariff lines, textile- and/or end-use-specific tariff provisions. Except for exceptional circumstances, recommendations are not to include a gender-specific “end use”. The recommendation could be for tariff relief for either a specific or an indeterminate period of time.

Process

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

Filing and Notification of a Request

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

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

Investigations

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

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

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

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

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

Recommendations to the Minister of Finance

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

Request for Review

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

Review on Expiry

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

Summary of Activities

New Requests

	2009-2010	2010-2011
Requests		
Received	-	-
Withdrawn	-	-
Awaiting the initiation of an investigation	-	-
Investigations completed during the fiscal year	-	-
Investigations in progress at end of the fiscal year	-	-
Recommendations to the Minister of Finance		
Tariff relief	2	-
No tariff relief	-	-
Reports to the Minister of Finance	2	-
Cumulative totals (since 1994)		
Requests received	187	187
Recommendations to the Minister of Finance		
Tariff relief	115	115
No tariff relief	49	49

Effects

The implementation of Tribunal recommendations is made by adding new tariff items to the *Customs Tariff* or, occasionally, by issuing specific customs duty remission orders. The table at the end of this chapter provides a list of the recommendations implemented by the Government as of December 31, 2010.

It should be noted that some of the tariff items in the list differ from the tariff items as they were originally enacted to give effect to the Tribunal's recommendations under the standing textile reference. First, on November 21, 2005, as part of its implementation of the recommendations made by the Tribunal in Reference No. MN-2004-002, the Government put in place a new tariff structure that created a number of duty-free tariff items. In instances where these broader duty-free tariff items covered products that were already provided duty-free treatment by individual tariff items implemented under the standing textile reference, the latter individual tariff items were deleted from the *Customs Tariff*. Second, on December 13, 2006, at the same time as it implemented the Tribunal's recommendations in Reference No. MN-2005-001, the Government further modified the tariff structure to eliminate additional tariff items and to amend the existing wording to remove additional gender-specific or product-specific end-use requirements. Third, amendments to the *Customs Tariff* came into effect on January 1, 2007, to implement updates to the *Harmonized Commodity Description and Coding System* by the World Customs Organization.

For the period from January 1 to December 31, 2010, the Tribunal estimates that the tariff items listed in the table at the end of this chapter covered imports worth about \$170 million and provided tariff relief worth about \$5.4 million. For the comparable period in 2009, these amounts were about \$150 million and about \$14.8 million respectively. The decrease in the value of tariff relief in 2010 is reflective of the reduction to zero of the Most-Favoured-Nation rate of duty for many of the broader tariff items from which the tariff items listed in the table at the end of this chapter were originally taken. These amendments came into effect on March 5, 2010, as part of government measures to eliminate duties on manufacturing inputs and machinery and equipment.

As stated earlier, textile inputs on which tariff relief may be requested are limited to 12 chapters of the *Customs Tariff*. From January 1 to December 31, 2010, tariff relief principally affected textile inputs falling in three chapters: Chapter 51 ("Wool, fine or coarse animal hair; horsehair yarn and woven fabric"); Chapter 52 ("Cotton"); and Chapter 54 ("Man-made filaments; strip and the like of man-made textile materials"). The percentage of total imports accounted for by the imports benefiting from tariff relief, falling in these 12 chapters, ranged from 0 to 42.8 percent. Overall, approximately 0.71 percent of total imports falling in the 12 chapters benefit from tariff relief. The following table provides, for calendar year 2010, a distribution of the imports benefiting from tariff relief, by *Customs Tariff* chapter.

Percentage of Imports Benefiting From Tariff Relief by Customs Tariff Chapter

Chapter	Description	Percentage
39	Plastics and articles thereof	-
40	Rubber and articles thereof	-
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric	42.76
52	Cotton	9.71
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	3.88
54	Man-made filaments; strip and the like of man-made textile materials	12.62
55	Man-made staple fibres	5.46
56	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.57
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	0.63
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	5.79
60	Knitted or crocheted fabrics	0.85
70	Glass and glassware	0.05
Weighted average		0.71

Source: Statistics Canada

Tariff Relief Recommendations in Place

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2010
TR-94-001		Canatex Industries (Division of Richelieu Knitting Inc.)	5402.45.00 ³
TR-94-004		Woods Canada Limited	5208.52.30
TR-94-010		Palliser Furniture Ltd.	5806.20.10
TR-94-012		Peerless Clothing Inc.	5309.29.30 ¹
TR-94-013 and TR-94-016		MWG Apparel Corp.	5208.42.91 ¹ 5208.43.70 ¹ 5208.49.91 ¹ 5513.31.20 ¹ 5513.39.11 ³
TR-94-017 and TR-94-018		Elite Counter & Supplies	9943.00.00
TR-95-003		Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20
TR-95-004		Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 ² 5208.52.20 ²
TR-95-005		Lingerie Bright Sleepwear (1991) Inc.	5513.11.91 ¹ 5513.41.10 ²

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2010
TR-95-009		Peerless Clothing Inc.	5408.21.40 ¹ 5408.22.23 ¹ 5408.22.91 ¹
TR-95-010 and TR-95-034		Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20
TR-95-011		Louben Sportswear Inc.	5408.31.40 ¹ 5408.32.60 ¹
TR-95-012		Perfect Dyeing Canada Inc.	5509.32.10
TR-95-013A		Doubletex	5208.11.00 ¹ 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20
TR-95-036		Canadian Mill Supply Co. Ltd.	5208.21.20
TR-95-037		Paris Star Knitting Mills Inc.	5408.24.12 ¹ 5408.24.92 ¹ 5408.34.30 ¹ 5516.14.20 ¹ 5516.24.10 ²
TR-95-051		Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22
TR-95-053 and TR-95-059		Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.20 ¹ 5802.19.40 ¹
TR-95-056		Sealy Canada Ltd.	3921.19.20 5407.69.30 5407.73.10 5407.94.10 5516.23.10 5903.90.25 6005.34.20
TR-95-057 and TR-95-058		Doubletex	5407.51.10 5407.61.96 5407.69.10 5515.11.10 5516.21.10 5516.91.10
TR-95-060		Triple M Fiberglass Mfg. Ltd.	7019.59.10
TR-95-061		Camp Mate Limited	6005.31.20 6005.32.20 6005.33.20 6005.34.30
TR-95-064 and TR-95-065		Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6005.34.60 6005.44.20
TR-96-003		Venture III Industries Inc.	5407.61.95 ²
TR-96-004		Acton International Inc.	5906.99.21

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2010
TR-97-001		Jones Apparel Group Canada Inc.	5407.91.10 ² 5407.92.20 ² 5407.93.10 ² 5408.21.40 ¹ 5408.22.91 ¹ 5408.23.91 ¹ 5408.31.40 ¹ 5408.32.60 ¹ 5408.33.30 ¹
TR-97-002 and TR-97-003		Universal Manufacturing Inc.	5208.43.70 ¹ 5513.41.20 ²
TR-97-006		Peerless Clothing Inc.	5407.51.30 ² 5903.90.22 ² 5903.90.23 ² 5903.90.24 ² 6005.31.30 ² 6005.31.40 ² 6005.32.30 ² 6005.32.40 ² 6005.33.91 ¹ 6005.34.40 ² 6005.34.50 ²
TR-97-004, TR-97-007, TR-97-008 and TR-97-010		Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20
TR-97-011		Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16
TR-97-012		Ballin Inc.	5407.93.30 5516.23.91 ²
TR-97-014		Lenrod Industries Ltd.	5603.93.40
TR-97-015, TR-97-016 and TR-97-020		Helly Hansen Canada Ltd.	5903.20.24
TR-98-001		Cambridge Industries	5608.19.20
TR-98-002		Distex Inc.	6006.23.10
TR-98-004, TR-98-005 and TR-98-006		Ladcal Investments Ltd. O/A Pintar Manufacturing, Nour Trading House and T.S. Simms and Company Limited	5806.10.20
TR-98-007		Caulfeild Apparel Group Ltd.	5208.43.70 ¹
TR-98-016		Peerless Clothing Inc.	5407.93.20 ²
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.60 ¹ 5408.33.30 ¹ 5408.34.30 ¹
TR-98-019		Tribal Sportswear Inc.	5209.12.10 ¹ 5209.22.40 ¹ 5209.32.10 ²
TR-99-002		Albany International Canada Inc.	5404.19.00 ³
TR-99-003/003A		Western Glove Works Ltd.	5209.31.30 5209.32.30
TR-99-004		Peerless Clothing Inc.	5112.11.50 ¹ 5112.19.20 ² 5112.19.30 ²
TR-99-005		Distex Inc.	6006.22.20
TR-99-006		Coloridé Inc.	5402.45.00 ³
TR-99-008		JMJ Fashions Inc.	5407.61.20 ²
TR-2000-001		Peerless Clothing Inc.	5408.22.23 ¹

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2010
TR-2000-002		Majestic Industries (Canada) Ltd.	5802.19.40 ¹
TR-2000-003		Tantalum Mining Corporation of Canada Limited	5911.40.10
TR-2000-004		Ballin Inc.	5516.23.91 ² 5516.93.00 ²
TR-2000-005		Peerless Clothing Inc.	5112.11.50 ¹ 5112.19.40 ²
TR-2000-006		Doubletex	5512.11.30 5513.11.20 5513.12.10 5513.13.10 5514.11.10 5514.12.10 5514.19.10 ³ 9997.00.00
TR-2000-007 and TR-2000-008		Scapa Tapes North America Ltd.	5208.21.50 5208.31.20
TR-2001-001		Gibson Textile Dyers	5512.29.10
TR-2001-002		Beco Industries Ltd.	5513.41.30
TR-2002-001		Richlu Manufacturing Ltd.	5209.39.10 ²
TR-2002-002		Peerless Clothing Inc.	5602.10.20 ²
TR-2002-006		C.S. Brooks Inc.	5407.91.20 5513.11.30
TR-2002-007		Peerless Clothing Inc.	5408.22.91 ¹ 5408.23.91 ¹
TR-2002-008		Tribal Sportswear Inc.	5515.11.20 ²
TR-2002-010/010A		Ballin Inc.	5516.22.10 5516.23.91 ²
TR-2003-001		Tribal Sportswear Inc.	5208.39.30 ¹ 5209.32.40 ² 5209.39.20 ² 5209.52.10 ² 5209.59.10 ²
TR-2003-002		Sunshine Mills Inc.	5205.24.30 5205.26.00 ¹ 5205.27.00 ¹
TR-2003-003		Peerless Clothing Inc.	5603.92.91 ²
TR-2003-004		Peerless Clothing Inc.	5903.90.23 ²
TR-2004-001		Tricots Liesse (1983) Inc.	5402.31.10
TR-2006-001		Peerless Clothing Inc.	5407.61.97
TR-2006-002		Tricots Liesse (1983) Inc.	5510.11.10 5510.30.10
TR-2007-001		Peerless Clothing Inc.	5603.93.70
TR-2007-002		Korhani Manufacture Inc.	5402.34.10
TR-2007-003		Peerless Clothing Inc.	5407.52.30
TA-98-001	TE-97-004 (TR-95-009)	Dyed woven fabrics of rayon and polyester	5408.31.40 ¹ 5408.32.60 ¹
TA-98-002	TE-97-003 (TR-94-009)	Vinex FR-9B fabric	5512.99.10
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	5801.35.10

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2010
TA-2003-001	TE-2003-001	Ring-spun yams	5205.14.20
	TE-2001-001		5205.15.00 ¹
	TE-98-002		5205.24.20
	(TR-94-002 and		5205.26.00 ¹
	TR-94-002A)		5205.27.00 ¹
			5205.28.00 ¹
			5205.35.00 ¹
			5205.46.00 ¹
			5205.47.00 ¹
			5205.48.00 ¹
			5206.14.00 ¹
			5206.15.00 ¹
			5206.24.00 ²
			5206.25.00 ¹
			5509.53.10
	5509.53.20 ²		
	5509.53.30 ²		
	5509.53.40 ²		

1. Tariff item encompasses goods not covered in the original request as a result of the November 21, 2005, Order in Council.
2. Tariff item encompasses goods not covered in the original request as a result of the December 13, 2006, Order in Council.
3. Tariff item encompasses goods not covered in the original request as a result of the June 23, 2006, Order in Council, which came into effect on January 1, 2007.