

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2010**

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Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

June 8, 2010

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, 2010.

Yours sincerely,

André F. Scott
Chairperson

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CHAPTER I

HIGHLIGHTS

During the last 12 months, members and staff of the Tribunal successfully managed an exceptionally large number of cases. Indeed, as the economy started to recover after the 2008-2009 recession, the Tribunal experienced a significant increase in the number of trade remedies cases, as domestic producers and importers positioned themselves to participate in the economic recovery. The Tribunal also observed a significant increase in the number of procurement cases because of tightening markets. Government-wide initiatives focussed on accountability and transparency also contributed to the awareness of suppliers as to the possibility of obtaining redress at the Tribunal.

Despite these increased workload pressures, all Tribunal's inquiries were completed on time, and all decisions that were subject to statutory deadlines were issued on time.

Trade Remedies

The Tribunal issued decisions in five preliminary injury inquiries and in four final injury inquiries. The estimated value of the Canadian market for the four final injury inquiries conducted by the Tribunal represented more than \$3.2 billion. The Tribunal received one request to conduct a public interest inquiry and four requests for interim reviews, including one case where the Tribunal decided to initiate an interim review of one of its orders. The Tribunal also issued three orders on expiry reviews. At the end of the fiscal year, one preliminary injury inquiry, one final injury inquiry and two expiry reviews were in progress.

On July 1, 2009, the free trade agreement between Canada and the European Free Trade Association member states of Iceland, Liechtenstein, Norway and Switzerland entered into force. As a result, legislative changes were made to the safeguard provisions of the *Canadian International Trade Tribunal Act (CITT Act)*.

Procurement

At the end of the fiscal year, a record high of 154 procurement complaints had been received. The Tribunal rendered decisions in 85 cases, which included 2 remands and 5 cases that had been in progress at the end of fiscal year 2008-2009.

On August 1, 2009, the Tribunal's jurisdiction in respect of procurement review was expanded with the coming into force of the *Canada-Peru Free Trade Agreement (CPFTA)*, and changes were made to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.

Appeals

The Tribunal received 81 appeals and issued 11 decisions on appeals from decisions of the President of the Canada Border Services Agency (CBSA) and the Minister of National Revenue made under the *Customs Act*, the *Excise Tax Act* and the *Special Import Measures Act (SIMA)*.

Textile Reference

Under the standing textile reference from the Minister of Finance, the Tribunal issued two reports concerning two requests for tariff relief.

Members

During the fiscal year, the Tribunal was pleased to welcome two new members. On July 20, 2009, Mr. Stephen A. Leach, a lawyer and international consultant, was appointed member of the Tribunal. On September 14, 2009, Mr. Jason W. Downey, a lawyer with more than 10 years of experience, was appointed member of the Tribunal.

Presentations and Advisory Role

Tribunal members and staff made presentations during the fiscal year to various international, legal and administrative bodies. Tribunal representatives presented a seminar on injury analysis to the heads of developing countries' investigating authorities at the World Trade Organization (WTO). As well, the Tribunal hosted delegations from Kenya and Barbados and sent a delegation to the International Trade Commission in the United States. In addition, the Tribunal provided advice to Canadian negotiators on matters within its expertise for the Doha Round of Negotiations and regional trade agreements.

Caseload

The table below reports the Tribunal's caseload for 2009-2010. In the second table, the Tribunal reports selected statistics relating to decisions that it rendered in the fiscal year, such as those relating to directions and administrative rulings. These statistics present a more complete picture of the complexity of the different cases considered by the Tribunal.

	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, 2010)
SIMA activities								
Preliminary injury inquiries	1	5	6	5	5	-	-	1
Inquiries	-	5	5	4	N/A	N/A	-	1
Public interest inquiries	-	1	1	1	-	1	-	-
Requests for interim reviews	-	4	4	-	1	3	-	-
Interim reviews	-	1	1	-	-	-	-	1
Expiries	1	4	5	5	3	2	-	-
Expiry reviews	2	3	5	3	N/A	N/A	-	2
TOTAL	4	23	27	18	9	6	-	5
Procurement review activities								
Complaints	10	154	164	24 ¹	49	61	7	72
Appeals								
Extensions of time								
<i>Customs Act</i>	-	7	7	1	N/A	N/A	-	6
<i>Excise Tax Act</i>	-	3	3	1	N/A	N/A	-	2
TOTAL	-	10	10	2	N/A	N/A	-	8
Appeals								
<i>Customs Act</i>	22	55	76	9	N/A	N/A	18	49
<i>Excise Tax Act</i>	44	26	70	-	N/A	N/A	44	26
<i>SIMA</i>	2	-	2	2	N/A	N/A	-	-
TOTAL	68	81	148	11	N/A	N/A	62	75
Standing textile reference								
Requests for tariff relief	2	-	2	2	N/A	N/A	-	-
<p>1. Includes only cases for which the Tribunal decided to conduct inquiries. Also includes two decisions on cases that were remanded by the Federal Court of Appeal.</p> <p>N/A = Not applicable</p>								

Statistics Relating to Decisions Rendered in the Fiscal Year

	<i>SIMA</i> Activities	Procurement Review Activities	Appeals	Standing Textile Reference	TOTAL
Orders					
Disclosure orders	19	-	-	-	19
Cost award orders	N/A	11	N/A	N/A	11
Compensation orders	N/A	-	N/A	N/A	-
Production orders	19	1	-	-	20
Postponement of award orders	N/A	2	N/A	N/A	2
Rescission of postponement of award orders	N/A	-	N/A	N/A	-
Directions/administrative rulings					
Requests for information	247	-	-	-	247
Motions	1	-	4	-	5
Subpoenas	4	-	-	-	4
Other statistics					
Public hearing days	24	6	10	-	40
File hearings ¹	-	69	2	1	72
Witnesses	70	15	17	-	102
Participants	124	143	145	2	414
Questionnaire respondents ²	229	-	-	1	230
Exhibits ³	3,184	1,388	1,150	73	5,795
Pages of official records ³	97,581	35,900	19,783	600	153,864
^{1.} A file hearing occurs where the Tribunal renders a decision on the basis of written submissions, without holding a public hearing. ^{2.} Includes those that replied that they do not import or produce the goods subject to the inquiry or expiry review and unsolicited replies. ^{3.} Estimated. N/A = Not applicable					



CHAPTER II

MANDATE, ORGANIZATION AND ACTIVITIES

Introduction

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

In most areas of its jurisdiction, the Tribunal conducts public hearings. These are ordinarily held at the Tribunal's offices in Ottawa, Ontario, although hearings may also be held elsewhere in Canada, either in person or through videoconferencing. The Tribunal follows rules and procedures similar to those of a court of law; however, in order to facilitate greater access, they are not as formal or strict. The *CITT Act* states that hearings, generally conducted by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information. The *CITT Act* contains provisions for the protection of confidential information. Only independent counsel who have filed declarations and confidentiality undertakings may have access to confidential information. Protecting commercially sensitive information against unauthorized disclosure has been, and continues to be, of paramount importance to the Tribunal.

The Tribunal's Web site provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as other information relating to the Tribunal's current activities. The Tribunal offers a notification service to inform subscribers of each new posting on its Web site. Subscribers can choose a specific category of interest.

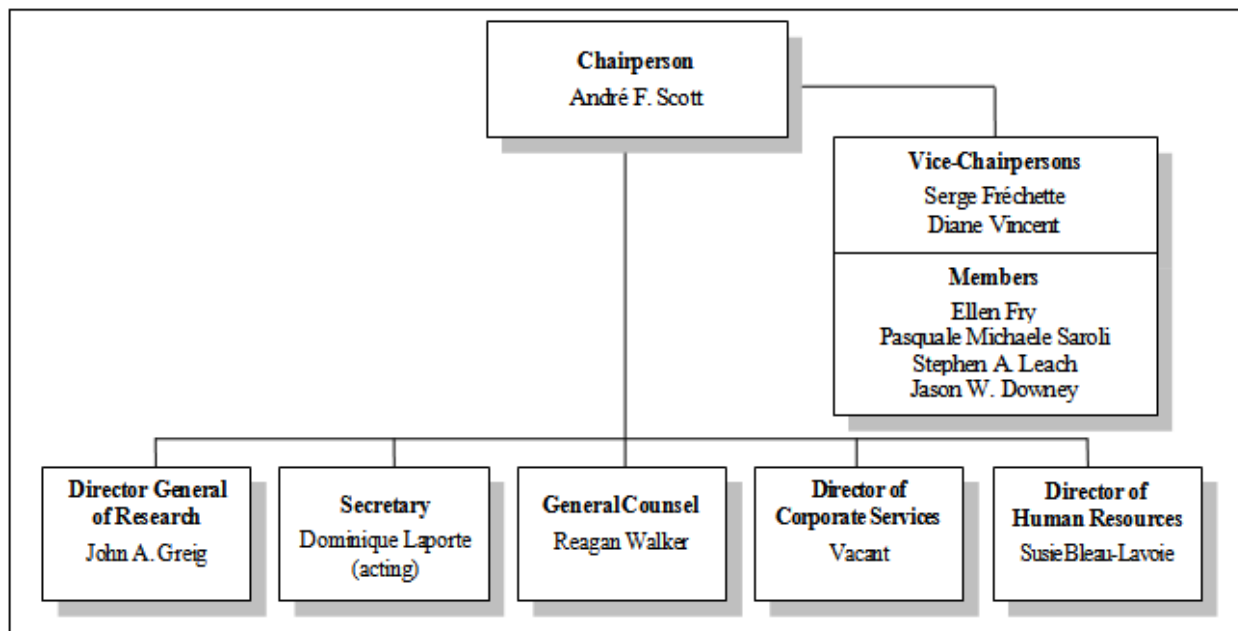
Membership

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; he is responsible for the assignment of members to cases and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

Organization

The Tribunal is supported by a permanent staff of 87 persons, including the members, with the principal officers being:

- 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 **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 and staff of the Tribunal;
- 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, and relations with government departments and foreign governments;
- 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 corporate services, such as financial management, information technology, systems and processes, materiel management, accommodation and administrative services; and
- the **Director of Human Resources**, who provides strategic direction, planning and management of the full range of human resources services, programs, solutions and innovations for the Tribunal.



Consultations

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 at the Department of Justice and the trade consulting community who appear regularly before the Tribunal. 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.

Judicial Review and Appeal to the Federal Court of Appeal

Any person affected by Tribunal findings or orders under section 43, 44, 76.01, 76.02 or 76.03 of *SIMA* can request judicial review by the Federal Court of Appeal, for instance, on grounds of alleged denial of natural justice or error of fact or law. Similarly, any person affected by Tribunal procurement findings and recommendations under the *CITT Act* can request judicial review by the Federal Court of Appeal. Lastly, Tribunal appeal orders and decisions, under the *Customs Act*, can be appealed 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.

WTO Dispute Resolution

Governments that are members of the WTO may challenge Tribunal injury findings or orders in dumping and countervailing duty cases before the WTO Dispute Settlement Body. This is initiated by intergovernmental consultations under the WTO Dispute Settlement Understanding.



CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Process

Under *SIMA*, the Canada Border Services Agency (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-2008-003	PI-2009-001	PI-2009-002	PI-2009-003	PI-2009-004	PI-2009-005
Product	Waterproof footwear	Mattress innerspring units	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	Oil country tubular goods	Polyiso insulation board	Greenhouse bell peppers
Type/country	Dumping/China and Vietnam	Dumping/China	Dumping/Ukraine	Dumping and subsidizing/China	Dumping/United States	Dumping/Netherlands
Date of determination	April 28, 2009	June 26, 2009	September 4, 2009	October 23, 2009	December 7, 2009	In progress
Determination	Injury	Injury	Injury	Injury	Injury	
Participants	9	12	2	9	3	
Pages of official record	1,875	1,133	1,082	7,786	1,064	

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

The Tribunal completed five preliminary injury inquiries in the fiscal year. There was one preliminary injury inquiry 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 to a final determination of dumping or subsidizing.

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

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

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

The *Special Import Measures Regulations* prescribe factors that the Tribunal may consider in its determination of whether the dumping or subsidizing of goods has caused injury or retardation or is threatening to cause injury to a domestic industry. These factors include, among others, the volume of dumped or subsidized goods, the effects of the dumped or subsidized goods on prices and the impact of the dumped or subsidized goods on 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, usually starting once 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 and foreign producers/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 about the industry and market in question. Parties may also seek the exclusion of certain goods from the effects of a Tribunal finding.

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

Final Injury Inquiry Activities

Inquiry No.	NQ-2009-001	NQ-2009-002	NQ-2009-003	NQ-2009-004	NQ-2009-005
Product	Waterproof footwear	Mattress innerspring units	Hot-rolled carbon steel plate and high-strength low-alloy plate	Oil country tubular goods	Polyiso insulation board
Type/country	Dumping/China and Vietnam	Dumping/China	Dumping/Ukraine	Dumping and subsidizing/China	Dumping/United States
Date of finding	September 25, 2009	November 24, 2009	February 2, 2010	March 23, 2010	In progress
Finding	No injury	Injury	Threat of injury	Coupling stock/No injury Casing and tubing/Injury	
Questionnaires sent	108	86	92	82	
Questionnaire responses received	60	36	27	40	
Requests for exclusions	45	2	-	14	
Requests for exclusions granted	-	-	-	1	
Participants	15	9	3	13	
Exhibits	621	390	411	514	
Pages of official record	12,779	8,715	8,340	10,200	
Public hearing days	5	5	4	3	
Witnesses	14	16	11	9	

Final Injury Inquiries Completed in the Fiscal Year

The Tribunal completed four final injury inquiries in the fiscal year. They concerned waterproof footwear, mattress innerspring units, hot-rolled carbon steel plate and high-strength low-alloy plate, and oil country tubular goods. In 2008, the estimated values of the Canadian market for the first, third and fourth goods were, respectively, \$87 million, \$1.4 billion and \$1.7 billion. For confidentiality reasons, the value of the market for mattress innerspring units cannot be disclosed. The following summaries were prepared for general information purposes only and are of no legal effect.

NQ-2009-001—Waterproof Footwear

This inquiry concerned dumped imports from China and Vietnam.

In its investigation, the Tribunal sent detailed questionnaires to 6 known domestic producers, 57 of the largest importers, 16 foreign producers/exporters of the subject goods in the named countries and 29 purchasers of waterproof footwear. Of the 108 questionnaires sent, 60 completed questionnaires were received. There were 15 participants to the inquiry, with 14 witnesses appearing before the Tribunal during 5 days of public hearing. The official record consisted of 621 exhibits, totalling 12,779 pages of documents.

The Tribunal first determined that waterproof footwear produced in Canada was like goods in relation to the subject goods. The Tribunal then concluded that the like goods constituted a single class of goods. Finally, the Tribunal determined that only three of the six known domestic producers of waterproof footwear, which accounted for a major proportion of the total domestic production of like goods, constituted the domestic industry.

On September 25, 2009, the Tribunal found that the dumping of the subject goods had not caused material injury to the domestic industry. The Tribunal also found that dumped imports were not threatening to cause material injury to the domestic industry within the subsequent 18 to 24 months. In the Tribunal's view, imports of the subject goods would continue to be present in the Canadian market, but would not cause adverse price effects or displace domestic production.

NQ-2009-002—Mattress Innerspring Units

This inquiry concerned dumped imports from China.

In its investigation, the Tribunal sent detailed questionnaires to 9 known domestic producers, 29 of the largest importers, 33 foreign producers/exporters of the subject goods in the named country and 15 purchasers of mattress innerspring units. Of the 86 questionnaires sent, 36 completed questionnaires were received. There were 9 participants to the inquiry, with 16 witnesses appearing before the Tribunal during 5 days of public hearing. The official record consisted of 390 exhibits, totalling 8,715 pages of documents.

The Tribunal first determined that domestically produced mattress innerspring units were like goods in relation to the subject goods. The Tribunal then concluded that the like goods constituted a single class of goods. Finally, the Tribunal determined that the six known domestic producers of mattress innerspring units, which accounted for the totality of the total domestic production of like goods, constituted the domestic industry.

On November 24, 2009, the Tribunal found that the domestic industry was materially injured by the increase in the volume of imports of the subject goods in terms of significant price undercutting, price suppression, reduced capacity utilization, lost domestic sales and market share, decreased employment levels and diminished financial performance.

With respect to factors other than the dumping, such as the economic downturn, changes in consumer trends, effects of imports from the United States and the closure of a Canadian mattress manufacturing plant, the Tribunal was of the view that any injurious effect attributable to these factors did not negate its injury finding.

Regarding requests for exclusions, the Tribunal received several requests from two requesters. One requester withdrew all its requests at the hearing, and the Tribunal denied the two requests of the remaining requester.

NQ-2009-003—Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate

This inquiry concerned dumped imports from Ukraine.

In its investigation, the Tribunal sent detailed questionnaires to 3 known domestic producers, 37 of the largest importers, 24 foreign producers/exporters of the subject goods in the named country and 28 purchasers of hot-rolled carbon steel plate and high-strength, low-alloy plate. Of the 92 questionnaires sent, 27 completed questionnaires were received. There were 3 participants to the inquiry, with 11 witnesses appearing before the Tribunal during 4 days of public hearing. The official record consisted of 411 exhibits, totalling 8,340 pages of documents.

The Tribunal first determined that domestically produced carbon steel plate was like goods in relation to the subject goods. The Tribunal then concluded that the like goods constituted a single class of goods. Finally, the Tribunal determined that the three known domestic steel mills and the four known domestic service centre producers constituted the domestic industry.

On February 2, 2010, the Tribunal found that the dumping of the subject goods had not caused material injury to the domestic industry. However, in the Tribunal's view, the dumping of the subject goods in the subsequent 24-month period was likely to cause significant price depression, lost sales and reduced profitability to the domestic mills and have a smaller, indirect price depression effect on the service centre producers. There would also likely be injury in the form of reduced cash flow, reduced capacity utilization and reduced employment. The magnitude of the total injury would be material in the context of domestic production as a whole and was clearly foreseen and imminent, therefore threatening to cause injury to the domestic industry.

NQ-2009-004—Oil Country Tubular Goods

This inquiry concerned dumped and subsidized imports from China.

In its investigation, the Tribunal sent detailed questionnaires to 4 known domestic producers, 31 of the largest importers, 20 foreign producers/exporters of the subject goods in the named country and 27 purchasers of oil country tubular goods. Of the 82 questionnaires sent, 40 questionnaire completed questionnaires were received. There were 13 participants to the inquiry, with 9 witnesses appearing before the Tribunal during 3 days of public hearing. The official record consisted of 514 exhibits, totalling 10,200 pages of documents.

The Tribunal first determined that there were two classes of goods, coupling stock, as well as casing and tubing. The Tribunal then determined that domestically produced coupling stock was like goods in relation to the subject coupling stock. It also determined that domestically produced casing and tubing, including seamless casing covered by its finding in Inquiry No. NQ-2007-001, were like goods in relation to the subject casing and tubing. Finally, the Tribunal determined that there was no domestic industry for

coupling stock and that the four known domestic producers of casing and tubing, which accounted for the totality of the total domestic production of like goods, constituted the domestic industry for casing and tubing.

On March 23, 2010, the Tribunal found that the domestic industry for casing and tubing was materially injured by the increase in the volume of imports of the subject casing and tubing in terms of significant price undercutting, price depression, price suppression, decreased production and reduced capacity utilization, lost domestic sales and market share, decreased employment levels and diminished financial performance.

With respect to factors other than the dumping and subsidizing, such as the domestic industry's inability to supply, the recession, imports from non-subject countries, exchange rates, the directive on minimum casing design requirements, intra-industry competition and direct competition with distributors, the Tribunal was of the view that, notwithstanding the accumulative losses suffered by the domestic industry that were attributable to some of these factors, the dumping and subsidizing of the subject casing and tubing in and of themselves caused material injury.

Regarding requests for exclusions, the Tribunal received 14 requests from 9 requesters. Five of the 14 requests were for coupling stock, which were not considered in view of the Tribunal's finding. The Tribunal granted an exclusion for pup joints, which addressed 3 requests. The remaining 6 requests were denied.

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

There was one final injury inquiry in progress at the end of the fiscal year, *Polyiso Insulation Board* (NQ-2009-005), which concerns dumped imports from the United States.

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 part or all of the duties may not be in the public interest. If it is of this view, it then conducts a public interest inquiry pursuant to section 45 of *SIMA*. The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by how much.

Following its injury finding of March 17, 2009, in *Aluminum Extrusions* (NQ-2008-003), the Tribunal received three properly documented requests for a public interest inquiry (PB-2008-003), which alleged that the imposition of duties would lessen competition in Western Canada, resulting in job losses and increased costs to end users. The Tribunal received six submissions in support of the initiation of a public interest inquiry and one submission opposed.

On June 30, 2009, the Tribunal decided not to initiate a public interest inquiry into this matter, as it was of the opinion that there were no reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount, would not or might not be in the public interest. The Tribunal concluded that the requesters did not present sufficient evidence to substantiate their assertions of the negative effects that the imposition of anti-dumping and countervailing duties had or might have had on the public interest.

Interim Reviews

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

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

Interim Review Activities

Interim review No.	RD-2009-001	RD-2009-002	RD-2009-003	RD-2009-004
Product	Aluminum extrusions	Copper pipe fittings	Waterproof footwear and bottoms	Certain fasteners
Type/country	Dumping and subsidizing/China	Dumping/United States, Korea and China Subsidizing/China	Dumping/China	Dumping and subsidizing/China and Chinese Taipei
Date of order or notice of commencement of interim review	July 24, 2009	February 5, 2010	February 24, 2010	March 1, 2010
Order	No review	No review	Review warranted/In progress	No review
Participants	1	7	2	1
Exhibits	4	9	In progress	5
Pages of official record	120	120	In progress	150

Interim Reviews Completed in the Fiscal Year and in Progress at the End of the Fiscal Year

The Tribunal ruled on four requests for interim reviews received in the fiscal year. The Tribunal determined that interim reviews were not warranted in Interim Review Nos. RD-2009-001, *Aluminum Extrusions*, RD-2009-002, *Copper Pipe Fittings*, and RD-2009-004, *Certain Fasteners*. Regarding Interim Review No. RD-2009-003, *Waterproof Footwear and Bottoms*, which concerned a request to exclude certain dumped footwear from China from the Tribunal's order dated December 7, 2005, the Tribunal determined that an interim review was warranted. That interim review was in progress at the end of the fiscal year.

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.

Expiry Activities

Expiry No.	LE-2008-003	LE-2009-001	LE-2009-002	LE-2009-003	LE-2009-004
Product	Certain fasteners	Laminate flooring	Whole potatoes	Refined sugar	Waterproof footwear and bottoms
Type/country	Dumping/China and Chinese Taipei Subsidizing/China	Dumping/China and France Subsidizing/China	Dumping/United States	Dumping/United States, Denmark, Germany, Netherlands and United Kingdom Subsidizing/European Union	Dumping/China
Date of order or notice	April 22, 2009	September 30, 2009	December 30, 2009	February 17, 2010	March 24, 2010
Decision	Expiry review initiated	Expiry review not initiated	Expiry review initiated	Expiry review initiated	Expiry review not initiated
Participants	8	2	1	7	1
Pages of official record	200	200	90	1,200	200

In fiscal year 2009-2010, the Tribunal decided to commence expiry reviews in three cases.

On the basis of submissions from interested parties, the Tribunal was of the view that expiry reviews were warranted and initiated Expiry Review No. RR-2009-001 respecting certain fasteners, Expiry Review No. RR-2009-002 respecting whole potatoes and Expiry Review No. RR-2009-003 respecting refined sugar.

In Expiry No. LE-2009-001, *Laminate Flooring*, the Tribunal received no request for a review of its finding made on June 16, 2005. The finding will therefore expire on June 15, 2010.

In Expiry No. LE-2009-004, *Waterproof Footwear and Bottoms*, the Tribunal received no request for a review of its order made on December 7, 2005. The order will therefore expire on December 6, 2010.

Expiry Reviews

The Tribunal initiates a review of an order or finding, as requested, if it determines that such a review is warranted. It then 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. If the Tribunal determines that an expiry review is not warranted, it issues an order with reasons for its decision.

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-2008-003	RR-2008-004	RR-2009-001	RR-2009-002	RR-2009-003
Product	Wood slats	Stainless steel wire	Certain fasteners	Whole potatoes	Refined sugar
Type/country	Dumping/Mexico and China	Dumping/Korea, Switzerland and United States Subsidizing/India	Dumping/China and Chinese Taipei Subsidizing/China	Dumping/United States	Dumping/United States, Denmark, Germany, Netherlands and United Kingdom Subsidizing/European Union
Date of order	July 15, 2009	July 29, 2009	January 6, 2010		
Order	Findings rescinded	Findings rescinded	Finding continued for carbon steel fasteners Finding rescinded for stainless steel fasteners	In progress	In progress
Questionnaires sent¹	80	130	661		
Questionnaire responses received²	26	10	41		
Participants	2	2	15		
Exhibits	255	254	705		
Pages of official record	5,327	5,221	31,629		
Public hearing days	2	1	4		
Witnesses	4	6	10		

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

In the fiscal year, the Tribunal completed three expiry reviews.

RR-2008-003—Wood Slats

This review concerned wood slats imported from Mexico and China.

In its investigation, the Tribunal sent detailed questionnaires to the 3 known domestic producers, 67 of the largest importers and 10 foreign manufacturers of the subject goods in the named countries. Of the 80 questionnaires sent, 26 completed questionnaires were received. There were 2 participants to the expiry review, with 4 witnesses appearing before the Tribunal during 2 days of public hearing. The official record consisted of 255 exhibits, totalling 5,327 pages of documents.

On July 15, 2009, the Tribunal rescinded its findings made on June 18, 2004, in Inquiry No. NQ-2003-003 in respect of wood slats originating in or exported from Mexico and China.

RR-2008-004—Stainless Steel Wire

This review concerned stainless steel wire imported from Korea, Switzerland, the United States and India.

In its investigation, the Tribunal sent detailed questionnaires to the sole known domestic producer, 62 of the largest importers and 67 foreign manufacturers of the subject goods in the named countries. Of the 130 questionnaires sent, 10 completed questionnaires were received. There were 2 participants to the expiry review, with 6 witnesses appearing before the Tribunal during 1 day of public hearing. The official record consisted of 254 exhibits, totalling 5,221 pages of documents.

On July 29, 2009, the Tribunal rescinded its findings made on July 30, 2004, in Inquiry No. NQ-2004-001 concerning stainless steel round wire originating in or exported from Korea, Switzerland, the United States and India.

RR-2009-001—Certain Fasteners

This review concerned certain fasteners imported from China and Chinese Taipei.

In its investigation, the Tribunal sent detailed questionnaires to the 40 known domestic producers, 308 of the largest importers and 313 foreign manufacturers of the subject goods in the named countries. Of the 661 questionnaires sent, 41 completed questionnaires were received. There were 15 participants to the expiry review, with 10 witnesses appearing before the Tribunal during 4 days of public hearing. The official record consisted of 705 exhibits, totalling 31,629 pages of documents.

On January 6, 2010, the Tribunal continued its finding made on January 7, 2005, in Inquiry No. NQ-2004-005 concerning certain carbon steel fasteners originating in or exported from China and Chinese Taipei. The Tribunal rescinded its finding made on January 7, 2005, in Inquiry No. NQ-2004-005 concerning certain stainless steel fasteners originating in or exported from Chinese Taipei.

Expiry Reviews in Progress at the End of the Fiscal Year

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

RR-2009-002—Wholes Potatoes

This is a review of the order made on September 12, 2005, in Expiry Review No. RR-2004-006 concerning the dumping of whole potatoes originating in or exported from the United States.

RR-2009-003—Refined sugar

This is a review of the orders made on November 2, 2005, in Expiry Review No. RR-2004-007 concerning the dumping of refined sugar originating in or exported from the United States, Denmark, Germany, the Netherlands, the United Kingdom and the subsidizing of refined sugar originating in or exported from the European Union.

Judicial or Panel Reviews of SIMA Decisions

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

Tribunal Case No.	Product	Country of Origin	Court File No./Status
NQ-2008-003	Aluminum extrusions	China	A—174—09 Application allowed in part (February 24, 2010)
NQ-2009-002	Mattress innerspring units	China	A—515—09
RD-2009-001	Aluminum extrusions	China	A—329—09 Application discontinued (March 11, 2010)
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.			

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, 2010

Review No. or Inquiry No.	Date of Decision	Product	Type/Country	Related Decision No. and Date
NQ-2004-006	June 16, 2005	Laminate flooring	Dumping/China and France Subsidizing/China	
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	
RR-2004-006	September 12, 2005	Whole potatoes	Dumping/United States	RR-99-005 (September 13, 2000) RR-94-007 (September 14, 1995) RR-89-010 (September 14, 1990) CIT-16-85 (April 18, 1986) ADT-4-84 (June 4, 1984)
RR-2004-007	November 2, 2005	Refined sugar	Dumping/United States, Denmark, Germany, Netherlands and United Kingdom Subsidizing/European Union	RR-99-006 (November 3, 2000) NQ-95-002 (November 6, 1995)
RR-2004-008	December 7, 2005	Waterproof footwear and bottoms	Dumping/China	NQ-2000-004 (December 8, 2000)
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)

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 solicitation covered by *NAFTA*, the *AIT*, the *AGP*, the *Canada-Chile Free Trade Agreement (CCFTA)* or the *Canada-Peru Free Trade Agreement (CPFTA)* may file a formal complaint with the Tribunal. They are encouraged however to first attempt to resolve the issue with the government institution responsible for the procurement.

The Tribunal's role is to determine whether the government institution responsible for the procurement has observed 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 the submission against the 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 government institution responsible for the procurement files a response called the Government Institution Report. The complainant and any intervener are sent a copy of the response and then have the opportunity to submit comments. Any comments made are forwarded to the government institution and other parties to the inquiry.

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

The Tribunal then determines whether the complaint is valid. If so, the Tribunal may make recommendations for remedies, such as re-tendering, re-evaluating or providing compensation. The government institution, as well as all other parties and interested persons, is notified of the Tribunal's decision. Recommendations made by the Tribunal 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

	2008-2009	2009-2010
Number of Complaints		
Carried over from previous fiscal year	18	10
Received in fiscal year	63	154
Remanded	2	-
Total	83	164
Complaints Withdrawn or Cases Closed		
Withdrawn	1	7
Abandoned while filing	-	-
Subtotal	1	7
Inquiries Not Initiated		
Lack of jurisdiction/not a potential supplier	3	9
Late filing	9	22
Not a designated contract/no reasonable indication of a breach/premature	29	30
Subtotal	41	61
Inquiry Results		
Complaints dismissed	3	5
Complaints not valid	17	8
Complaints valid or valid in part	10	9
Decisions on remand	1	2
Inquiries ceased	-	-
Subtotal	31	24
Outstanding at End of Fiscal Year	10	72

In 2009-2010, the Department of Public Works and Government Services (PWGSC) issued approximately 17,600 contracts valued at between \$25,000 and \$361 million, for a total value of \$10.6 billion. The 154 complaints received in the fiscal year pertained to 147 different contracts, representing about 0.8 percent of the total number of contracts issued by PWGSC in 2009-2010.

Summary of Selected Determinations

During the fiscal year, the Tribunal rendered decisions in 85 cases. Seventy-two 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 of no legal effect.

PR-2009-0017—TELUS Communications Company

The Tribunal held a public hearing in this case. There were 3 participants in this inquiry. The official record consisted of 53 exhibits.

The complaint was filed by TELUS Communications Company (TELUS) concerning a procurement by PWGSC on behalf of various government departments for the provision of toll-free, intelligent contact management, interactive voice response and uninterrupted power supply services. TELUS submitted that PWGSC failed to act in accordance with implied and explicit terms of the Request for Proposal (RFP) to carry out the required reference check reasonably and diligently, which resulted in PWGSC failing to follow the evaluation process outlined in the RFP. TELUS also submitted that PWGSC added language to an evaluation criterion during the evaluation phase that affected the manner in which its proposal was evaluated.

On September 21, 2009, the Tribunal found that PWGSC had failed to discharge its obligations under the RFP concerning the reference checks conducted in relation to TELUS's bid and, therefore, did not conduct the evaluation in accordance with Article 506(6) of the *AIT*. The Tribunal concluded that the complaint was valid.

The Tribunal recommended that PWGSC complete the customer reference check process for TELUS in accordance with the requirements of the RFP and that, if the results indicated that TELUS had the requisite experience, it take certain actions to effect a remedy in TELUS's favour.

PR-2009-030—Financial Smarts

The Tribunal considered this case on the basis of written submissions. There were 2 participants in this inquiry. The official record consisted of 14 exhibits.

The complaint was filed by Financial Smarts concerning a procurement by the Financial Consumer Agency of Canada (FCAC) for the curriculum writing of the Financial Basics Education Program for adults. Financial Smarts alleged that the FCAC improperly evaluated the presentation portion of its proposal.

As the FCAC is not specifically designated by regulation as a "government institution", the Tribunal was confronted with the issue of whether the FCAC is otherwise covered through designation in the regulations of any other department, ministry of state, body or office. The Tribunal determined that this was not the case and, therefore, that the contract in question was not awarded by a "government institution" within the meaning ascribed to that term by the *CITT Act*.

Accordingly, the contract did not meet the definition of a "designated contract", with the result being that the Tribunal was deprived of jurisdiction to conduct an inquiry into the matter. On August 28, 2009, the Tribunal therefore dismissed the complaint.

PR-2009-037—Giamac Inc. dba AutoRail Forwarders

The Tribunal held a public hearing in this case. There were 3 participants in this inquiry. The official record consisted of 66 exhibits.

This was a complaint filed by Giamac Inc. dba AutoRail Forwarders (Giamac) concerning a procurement by PWGSC on behalf of the Department of National Defence (DND) for services in support of the movement of personal motor vehicles. Giamac submitted that, in a first solicitation, PWGSC had denied it the opportunity to correct a clerical error in its bid and had refused to provide it with a timely debriefing.

In the second solicitation for the same services and for which Giamac claimed to have submitted a superior bid, Giamac claimed that, as it had received a significantly lower score, the procurement process was not fair or transparent and did not provide an equal opportunity to all suppliers.

The Tribunal did not accept the first two grounds of complaint for inquiry. The third ground of complaint, relating to the second solicitation, was accepted for inquiry.

On November 25, 2009, the Tribunal found that PWGSC's decision to conduct a second evaluation of Giamac's bid was consistent with the wording of the RFP and was not a violation of the *AIT*. The Tribunal also found that the evidence did not establish that any particular acts during the course of the re-evaluation, on the part of either PWGSC or DND, constituted unfairness in violation of the requirements of the *AIT*. As such, the Tribunal determined that the complaint was not valid.

Judicial Review of Procurement Decisions

Decisions Appealed to the Federal Court of Appeal

Tribunal File No.	Complainant Before the Tribunal	Applicant Before the Federal Court of Appeal	Court File No./Status
PR-2006-045	Les Systèmes Equinox Inc.	Les Systèmes Equinox Inc.	A—336—07 Application discontinued (October 14, 2009)
		Attorney General of Canada	A—343—07 Application dismissed (October 21, 2009)
PR-2006-045R	Les Systèmes Equinox Inc.	Les Systèmes Equinox Inc.	A—163—09 Application dismissed (October 21, 2009)
	Les Systèmes Equinox Inc.	Attorney General of Canada	A—166—09 Application dismissed (October 21, 2009)
PR-2007-008	Northrop Grumman Overseas Services Corporation	Attorney General of Canada	A—398—07 Application discontinued (December 23, 2009)
	Northrop Grumman Overseas Services Corporation	Lockheed Martin Corporation	A—418—07 Application discontinued (December 22, 2009)
	Northrop Grumman Overseas Services Corporation	Northrop Grumman Overseas Services Corporation	A—424—07 Application discontinued (December 22, 2009)
PR-2007-079	Immeubles Yvan Dumais Inc.	Attorney General of Canada	A—364—08 Application withdrawn (April 6, 2009)
PR-2008-047	L-3 Communications MAPPS Inc.	L-3 Communications MAPPS Inc.	A—133—09 Application dismissed (December 1, 2009)
PR-2008-048	Almon Equipment Limited	Attorney General of Canada	A—298—09
		Almon Equipment Limited	A—299—09
PR-2008-061	Neosoft Technologies Inc.	Attorney General of Canada	A—335—09 Application withdrawn (February 15, 2010)
PR-2009-016	Microsoft Canada Co., Microsoft Corporation and Microsoft Licensing, GP	Microsoft Canada Co.	A—304—09 Application discontinued (November 11, 2009)

Decisions Appealed to the Federal Court of Appeal (cont'd)

Tribunal File No.	Complainant Before the Tribunal	Applicant Before the Federal Court of Appeal	Court File No./Status
PR-2009-017	TELUS Communications Company	Attorney General of Canada	A—438—09 Application discontinued (March 24, 2010)
	TELUS Communications Company	Rogers Communications Inc.	A—439—09 Application discontinued (October 27, 2009)
PR-2009-019	Microsoft Canada Co., Microsoft Corporation and Microsoft Licensing, GP	Microsoft Canada Co.	A—313—09 Application discontinued (November 11, 2009)
PR-2009-039	6979611 Canada Inc.	6979611 Canada Inc.	A—414—09 Application discontinued (January 25, 2010)
PR-2009-044 and PR-2009-045	1091847 Ontario Ltd.	1091847 Ontario Ltd.	A—447—09
PR-2009-052	Groupe-conseil INTERALIA S.E.N.C.	Groupe-conseil INTERALIA S.E.N.C.	A—455—09 Application withdrawn (February 26, 2010)
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.			

Disposition of Procurement Complaints

File No.	Complainant	Status/Decision
PR-2007-008R	Northrop Grumman Overseas Services Corporation	Decision rendered on December 2, 2009 Lack of jurisdiction
PR-2007-010R and PR-2007-012R	Bureau d'études stratégiques et techniques en économique	Decision rendered on June 4, 2009 No grounds to recommend a new remedy
PR-2008-048	Almon Equipment Limited	Decision rendered on June 23, 2009 Complaint valid in part
PR-2008-049	ISE Inc.	Decision rendered on May 25, 2009 Complaint not valid
PR-2008-051	Doubletex Inc.	Complaint withdrawn
PR-2008-052	Global Upholstery Co. Inc.	Decision rendered on July 6, 2009 Complaint not valid
PR-2008-054	Jules Gordon Agencies Ltd.	Complaint withdrawn
PR-2008-061	Neosoft Technologies Inc.	Decision rendered on August 5, 2009 Complaint valid
PR-2008-062	Adélar Soucy (1975) inc.	Decision rendered on June 24, 2009 Complaint valid
PR-2008-063	Service d'entretien JDH Inc.	Decision rendered on August 10, 2009 Complaint valid
PR-2009-001	NETGEAR, Inc.	Decision rendered on April 16, 2009 Late filing
PR-2009-002	NETGEAR, Inc.	Decision rendered on April 16, 2009 Late filing
PR-2009-003	NETGEAR, Inc.	Decision rendered on April 16, 2009 Late filing
PR-2009-004	NETGEAR, Inc.	Decision rendered on April 16, 2009 Late filing
PR-2009-005	Marathon Management Company	Complaint withdrawn
PR-2009-006	Siva & Associates Inc.	Decision rendered on July 21, 2009 Complaint not valid

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2009-007	Terma A/S	Decision rendered on April 28, 2009 Not a potential supplier
PR-2009-008	Geophysical Service Incorporated	Decision rendered on May 19, 2009 No reasonable indication of a breach
PR-2009-009	Corbel Management Corp.	Decision rendered on May 25, 2009 No reasonable indication of a breach
PR-2009-010	Fleetway Inc.	Decision rendered on May 28, 2009 No reasonable indication of a breach
PR-2009-011	InterCall Canada	Decision rendered on June 1, 2009 No reasonable indication of a breach
PR-2009-012	Quelme Insurance Adjusters (Toronto) Ltd.	Decision rendered on June 19, 2009 Late filing
PR-2009-013	RTG Protech Inc.	Decision rendered on June 4, 2009 Late filing
PR-2009-014	RTG Protech Inc.	Decision rendered on June 4, 2009 No reasonable indication of a breach
PR-2009-015	Barer Engineering International	Decision rendered on June 4, 2009 No reasonable indication of a breach
PR-2009-016	Microsoft Canada Co., Microsoft Corporation and Microsoft Licensing, GP	Decision rendered on June 19, 2009 Not a designated contract
PR-2009-017	TELUS Communications Company	Decision rendered on September 21, 2009 Complaint valid
PR-2009-018	Flag Connection Inc.	Decision rendered on July 3, 2009 Late filing
PR-2009-019	Marathon Management Company	Decision rendered on June 30, 2009 No reasonable indication of a breach
PR-2009-020	Mustang Survival Corp.	Decision rendered on July 3, 2009 Complaint premature
PR-2009-021	Microsoft Canada Co., Microsoft Corporation and Microsoft Licensing, GP	Decision rendered on July 6, 2009 Not a designated contract
PR-2009-022	Siva & Associates	Decision rendered on July 22, 2009 Late filing
PR-2009-023	IT/net Ottawa Inc.	Decision rendered on July 6, 2009 Late filing
PR-2009-024	Cowater International Inc.	Decision rendered on July 8, 2009 Complaint premature
PR-2009-025	Giamac Inc. dba AurtoRail Forwarders	Decision rendered on July 13, 2009 No reasonable indication of a breach
PR-2009-026	Flag Connection Inc.	Decision rendered on September 3, 2009 Complaint dismissed
PR-2009-027	Maritime Fence Ltd.	Decision rendered on November 23, 2009 Complaint valid
PR-2009-028	Olsen West Industries Limited	Decision rendered on July 16, 2009 Late filing
PR-2009-029	Olsen West Industries Limited	Decision rendered on July 16, 2009 No reasonable indication of a breach
PR-2009-030	Financial Smarts	Decision rendered on August 28, 2009 Complaint dismissed
PR-2009-031	Femme Cachee Productions Inc.	Decision rendered on November 25, 2009 Complaint valid in part
PR-2009-032	Greenbank Customs Woodworking Ltd.	Decision rendered on October 14, 2009 Complaint not valid
PR-2009-033	Mustang Survival Corp.	Decision rendered on October 14, 2009 Complaint not valid

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2009-034	Ex Libris (USA) Inc.	Decision rendered on July 27, 2009 No reasonable indication of a breach
PR-2009-035	Papp Plastics & Distributing Limited	Decision rendered on August 6, 2009 Late filing
PR-2009-036	Biorex Inc.	Decision rendered on August 11, 2009 Late filing
PR-2009-037	Giamac Inc. dba AutoRail Forwarders	Decision rendered on November 25, 2009 Complaint not valid
PR-2009-038	Brainhunter (Ottawa) Inc.	Complaint withdrawn
PR-2009-039	6979611 Canada Inc.	Decision rendered on August 18, 2009 Late filing
PR-2009-040	Meta-Business Advantage Ltd.	Decision rendered on November 10, 2009 Complaint valid
PR-2009-041	The Masha Krupp Translation Group Limited	Complaint withdrawn
PR-2009-042	VitalAire Canada Inc.	Decision rendered on September 11, 2009 No reasonable indication of a breach
PR-2009-043	Tritan Electric and Controls Ltd.	Decision rendered on September 16, 2009 No reasonable indication of a breach
PR-2009-044	1091847 Ontario Ltd.	Decision rendered on September 16, 2009 No reasonable indication of a breach
PR-2009-045	1091847 Ontario Ltd.	Decision rendered on September 16, 2009 No reasonable indication of a breach
PR-2009-046	Linda Hershkovitz	Decision rendered on September 17, 2009 Late filing
PR-2009-047	Reicore Technologies Inc.	Decision rendered on September 22, 2009 Lack of jurisdiction
PR-2009-048	Siva & Associates Inc.	Decision rendered on September 28, 2009 Complaint premature
PR-2009-049	ImStrat Corporation Inc.	Decision rendered on September 28, 2009 No reasonable indication of a breach
PR-2009-050	INTERLOC Solutions (Canada) ULC	Decision rendered on October 6, 2009 No reasonable indication of a breach
PR-2009-051	A. F. Theriault & Son Ltd.	Decision rendered on October 6, 2009 Late filing
PR-2009-052	Groupe-conseil INTERALIA S.E.N.C.	Decision rendered on October 9, 2009 Late filing
PR-2009-053	Ontario Dental Association	Decision rendered on October 6, 2009 Lack of jurisdiction
PR-2009-054	Conciergerie Speico Inc.	Decision rendered on October 21, 2009 No reasonable indication of a breach
PR-2009-055	Aurora ROV Systems Ltd.	Complaint withdrawn
PR-2009-056	Microsoft Canada Co., Microsoft Corporation, Microsoft Licensing, GP and Softchoice Corporation	Decision rendered on March 12, 2010 Complaint not valid
PR-2009-057	CommVault Systems Canada Inc.	Decision rendered on November 5, 2009 Late filing
PR-2009-058	MetOcean Data Systems	Decision rendered on January 8, 2010 Complaint dismissed
PR-2009-059	Derek Cooper, doing business as Cleaning House	Decision rendered on February 8, 2010 Complaint dismissed
PR-2009-060	Argair Aerospace Limited	Decision rendered on February 15, 2010 Complaint valid
PR-2009-061	qdata Inc.	Decision rendered on November 26, 2009 No reasonable indication of a breach

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2009-062	Integrated Learning International Inc.	Decision rendered on November 27, 2009 Late filing
PR-2009-063	BMT Fleet Technology Limited	Decision rendered on March 18, 2010 Complaint dismissed
PR-2009-064	Krista Dunlop & Associates Inc.	Accepted for inquiry
PR-2009-065	A. S. Clark	Decision rendered on December 16, 2009 Late filing
PR-2009-066	Halkin Tool Limited	Accepted for inquiry
PR-2009-067	Les Immeubles Monthey Cartier inc.	Decision rendered on December 23, 2009 Lack of jurisdiction
PR-2009-068	A-1 Cleaners	Decision rendered December 29, 2009 Lack of jurisdiction
PR-2009-069	Chamber of Shipping of British Columbia	Decision rendered on March 24, 2010 Complaint not valid
PR-2009-070	Global Upholstery Co. Inc.	Complaint withdrawn
PR-2009-071	Avalon Controls Ltd.	Decision rendered on January 6, 2010 Complaint premature
PR-2009-072	Al Bawaba Middle East Limited	Decision rendered on January 13, 2010 Lack of jurisdiction
PR-2009-073	Auto Light Atlantic Limited	Decision rendered on January 20, 2010 Late filing
PR-2009-074	MetOcean Data Systems	Decision rendered on January 21, 2010 Complaint premature
PR-2009-075	The Corporate Research Group Ltd., operating as CRG Consulting	Decision rendered on January 26, 2010 No reasonable indication of a breach
PR-2009-076	LeClair INFOCOM Inc.	Decision rendered on January 26, 2010 Lack of jurisdiction
PR-2009-077	Avalon Controls Ltd.	Accepted for inquiry
PR-2009-078	HeartZAP Services Inc.	Decision rendered on February 11, 2010 No reasonable indication of a breach
PR-2009-079	Vesey Seeds Limited, doing business as Club Car Atlantic	Decision rendered on February 10, 2010 Late filing
PR-2009-080	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-081	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-082	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-083	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-084	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-085	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-086	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-087	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-088	Contractual joint venture of Adware Promotions Inc. and Canadian Spirit Inc.	Accepted for inquiry
PR-2009-089	Airsolid inc.	Decision rendered on February 18, 2010 No reasonable indication of a breach
PR-2009-090	J.E. Judd & Associates Inc.	Decision rendered on February 24, 2010 No reasonable indication of a breach
PR-2009-091	Anjelika Vedenin	Decision rendered on February 22, 2010 Lack of jurisdiction
PR-2009-092	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-093	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-094	Enterasys Networks of Canada Ltd.	Accepted for inquiry

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2009-095	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-096	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-097	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-098	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-099	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-100	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-101	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-102	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-103	Integrys Ltd.	Decision rendered on March 5, 2010 Lack of jurisdiction
PR-2009-104	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-105	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-106	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-107	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-108	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-109	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-110	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-111	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-112	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-113	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-114	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-115	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-116	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-117	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-118	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-119	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-120	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-121	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-122	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-123	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-124	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-125	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-126	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-127	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-128	Enterasys Networks of Canada Ltd.	Accepted for inquiry
PR-2009-129	Conseils CRG, ANJARO International and Humber College	Decision rendered on March 16, 2010 No reasonable indication of a breach
PR-2009-130	Valcom Consulting Group Inc.	Accepted for inquiry
PR-2009-131	Supremex Inc.	Decision rendered on March 25, 2010 Late filing
PR-2009-132	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-133	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-134	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-135	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-136	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-137	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-138	Enterasys Networks of Canada Ltd.	Under consideration

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2009-139	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-140	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-141	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-142	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-143	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-144	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-145	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-146	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-147	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-148	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-149	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-150	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-151	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-152	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-153	Enterasys Networks of Canada Ltd.	Under consideration
PR-2009-154	Forrest Green Resource Management Corp.	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 about 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. Normally, 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 specifying the nature of their interest in the appeal and by indicating the reason for intervening and how they may assist the Tribunal in the resolution of the appeal.

Hearings

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

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

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

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

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

Extensions of Time

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

Under section 81.32 of the *Excise Tax Act*, a person may apply to the Tribunal for an extension of time to serve a notice of objection with the Minister of National Revenue under section 81.15 or 81.17 or to file a notice of appeal with the Tribunal under section 81.19. During the fiscal year, the Tribunal issued one order under the *Excise Tax Act* granting an extension of time. There were two 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 81 appeals. The Tribunal heard 18 appeals, of which 16 related to the *Customs Act* and 2 to the *Excise Tax Act*. It issued decisions on 11 appeals.

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.		In progress
AP-2007-016	Osram Sylvania Ltd.	March 19, 2010	Appeal withdrawn
AP-2007-028	Automed Technologies Inc.	April 20, 2009	Appeal dismissed
AP-2008-007	Dynamo Industries, Inc.	April 1, 2009	Appeal allowed
AP-2008-011	Sarstedt Canada Inc.		In progress
AP-2008-012	P.L. Light Systems Canada Inc.	September 16, 2009	Appeal allowed
AP-2008-015	J.I.T. Industrial Supply & Distribution Ltd.	February 17, 2010	Appeal allowed
AP-2008-018	Speculative Product Design Inc.	October 8, 2009	Appeal withdrawn
AP-2008-019	Dorel Industries Inc.		Postponed
AP-2008-020	Gladu Tools Inc.	October 7, 2009	Appeal withdrawn
AP-2008-022	Globe Electric Co. Inc.		In progress
AP-2008-023	Entrelec Inc. (ABB Canada)	December 17, 2009	Appeal dismissed
AP-2008-024	Merley Chains Ltd.	August 12, 2009	Appeal withdrawn
AP-2008-025	General Motors of Canada Limited	April 16, 2009	Appeal withdrawn
AP-2008-026	Loblaws Companies Ltd.	June 16, 2009	Appeal withdrawn
AP-2008-028	Cherry Stix Ltd.		In progress
AP-2008-029	Costco Wholesale Canada	August 26, 2009	Appeal withdrawn
AP-2008-031	Costco Wholesale Canada Ltd.	January 20, 2010	Appeal allowed
AP-2008-032	Dorel Industries Inc.	January 28, 2010	Appeal withdrawn
AP-2008-033	Dorel Distribution Canada	May 29, 2009	Appeal withdrawn
AP-2008-034	Whitewater Composites Ltd.	August 4, 2009	Appeal withdrawn
AP-2008-035	Outer Space Sports	July 28, 2009	Appeal withdrawn
AP-2009-001	Casio Canada Ltd.	January 22, 2010	Appeal withdrawn
AP-2009-002	Ivan Hoza	January 6, 2010	Appeal dismissed
AP-2009-003	CapsCanada Corporation		In progress
AP-2009-004	Wolseley Canada Inc.		In progress
AP-2009-005	Les pièces d'auto Transit Inc.		In progress
AP-2009-006	Lenbrook Industries Limited	August 17, 2009	Appeal withdrawn
AP-2009-007	Sanus Systems		In progress
AP-2009-008	Wolseley Canada Inc.		Postponed
AP-2009-009	Nicholson and Cates Limited		In progress
AP-2009-010	Wolseley Engineered Pipe Group	March 11, 2010	Appeal allowed in part
AP-2009-011	Jean-Pierre Pastinelli	February 8, 2010	Appeal dismissed
AP-2009-012	S.F. Marketing Inc.		In progress
AP-2009-013	Kvemeland Group North America Inc.		In progress
AP-2009-014	Transport Desgagnés Inc.		In progress
AP-2009-015	Danone Inc.	March 10, 2010	Appeal withdrawn
AP-2009-016	Tara Materials, Inc.		In progress
AP-2009-017	Nutricia North America		Postponed
AP-2009-019	Canadian Tire Corporation Ltd.		In progress
AP-2009-044	Baldor Electric Canada Inc.		In progress
AP-2009-045	Sher-wood Hockey Inc.		In progress
AP-2009-046	Igloo Vikski Inc.		Postponed
AP-2009-047	S.F. Marketing Inc.		In progress

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

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2009-049	Evenflo Canada Inc.		In progress
AP-2009-050	Fruit of the Loom Canada, Inc.		Postponed
AP-2009-051	Celco, Inc.	November 18, 2009	Appeal withdrawn
AP-2009-052	A. M. A. Plastics Ltd.		In progress
AP-2009-053	Sony of Canada	December 7, 2009	Appeal withdrawn
AP-2009-054	Loblaw Companies Ltd.		In progress
AP-2009-055	Jeno Neuman et Fils Inc.		In progress
AP-2009-056	Future Product Sales		In progress
AP-2009-057	Leeza Distribution Inc.		In progress
AP-2009-058	Jeno Neuman et Fils Inc.		In progress
AP-2009-059	Evenflo Canada Inc.		In progress
AP-2009-060	Rona Corporation		In progress
AP-2009-061	Criterion Catalyst & Technology Canada		In progress
AP-2009-062	3559972 Manitoba Ltd.	December 21, 2009	File closed
AP-2009-063	Dorel Distribution Canada		Postponed
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.		In progress
AP-2009-068	Sansivar Importing and Distributing		In progress
AP-2009-069	Shawn Guyatt		In progress
AP-2009-070	Chariot Carriers Inc.		In progress
AP-2009-071	BMC Coaters Inc.		In progress
AP-2009-072	Rona Corporation Inc.		In progress
AP-2009-073	Ingram Micro Inc.		In progress
AP-2009-074	Sears Canada Inc.		Postponed
AP-2009-075	Motrec Inc.	March 12, 2010	Appeal withdrawn
AP-2009-076	Rutherford Controls Internationals Corp.		In progress
AP-2009-077	Hasbro Canada Corporation		In progress
AP-2009-078	Disco-Tech Industries Inc.		In progress
AP-2009-079	Cory Kenney		In progress
AP-2009-080	Mike Miner		In progress
AP-2009-081	Disco-Tech Industries Inc.		Postponed
Excise Tax Act			
AP-2000-001	Deltagraph Communications Inc.	January 29, 2010	Appeal withdrawn
AP-2000-002	Présence Communication	January 29, 2010	Appeal withdrawn
AP-2000-003	Verge, Lebel	January 29, 2010	Appeal withdrawn
AP-2000-004	Studio Claude	January 29, 2010	Appeal withdrawn
AP-2000-005	Multi-Concept	January 29, 2010	Appeal withdrawn
AP-2000-019	TDF Artists	January 29, 2010	Appeal withdrawn
AP-2000-024	Graphics West	January 29, 2010	Appeal withdrawn
AP-2000-025	Jannock	January 29, 2010	Appeal withdrawn
AP-2000-030	Unitype	January 29, 2010	Appeal withdrawn
AP-2000-031	Colborne	January 29, 2010	Appeal withdrawn
AP-2000-032	Dynotype	January 29, 2010	Appeal withdrawn

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

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2000-038	Graphic Workshop	January 29, 2010	Appeal withdrawn
AP-2000-043	Visual Integrity	January 29, 2010	Appeal withdrawn
AP-2000-044	Jannock Imaging	January 29, 2010	Appeal withdrawn
AP-2000-045	Champlain Graphics	January 29, 2010	Appeal withdrawn
AP-2000-046	Versatel	January 29, 2010	Appeal withdrawn
AP-2001-042	Typographie dynamique	January 29, 2010	Appeal withdrawn
AP-2001-043	Typographie dynamique	January 29, 2010	Appeal withdrawn
AP-2001-044	Design SAB	January 29, 2010	Appeal withdrawn
AP-2001-045	159033 Canada	January 29, 2010	Appeal withdrawn
AP-2001-046	Prisme Communications	January 29, 2010	Appeal withdrawn
AP-2001-047	Typoform	January 29, 2010	Appeal withdrawn
AP-2001-048	Typoform	January 29, 2010	Appeal withdrawn
AP-2001-049	Graphiques Tanmar	January 29, 2010	Appeal withdrawn
AP-2001-050	Créations Corrado	January 29, 2010	Appeal withdrawn
AP-2001-051	Tremco photogravure	January 29, 2010	Appeal withdrawn
AP-2001-052	Tremco photogravure	January 29, 2010	Appeal withdrawn
AP-2001-053	Marquis Auclair	January 29, 2010	Appeal withdrawn
AP-2001-054	Boule de gomme	January 29, 2010	Appeal withdrawn
AP-2001-055	Boule de gomme	January 29, 2010	Appeal withdrawn
AP-2001-056	Stratégie trans-artistique	January 29, 2010	Appeal withdrawn
AP-2001-057	Stratégie trans-artistique	January 29, 2010	Appeal withdrawn
AP-2001-058	Photocomposition Tréma	January 29, 2010	Appeal withdrawn
AP-2001-059	Guy Gingras	January 29, 2010	Appeal withdrawn
AP-2001-060	Groupaction Marketing	January 29, 2010	Appeal withdrawn
AP-2001-061	Studio St. Louis	January 29, 2010	Appeal withdrawn
AP-2001-062	Publicité Kitchins	January 29, 2010	Appeal withdrawn
AP-2001-063	Composition solidaire	January 29, 2010	Appeal withdrawn
AP-2003-039	TDF Typographics	January 29, 2010	Appeal withdrawn
AP-2003-048	Hinds, Brian and Assoc.	January 29, 2010	Appeal withdrawn
AP-2003-055	Kenmar Graphics	January 29, 2010	Appeal withdrawn
AP-2003-056	Esna Park Litho Art	January 29, 2010	Appeal withdrawn
AP-2004-006	Lithocolor Services	January 29, 2010	Appeal withdrawn
AP-2008-030	Arnold Bros. Transport Ltd.		In progress
AP-2009-018	Manufacture de Bijoux Étoile d'Argent Inc.	March 15, 2010	Appeal withdrawn
AP-2009-020	Laidlaw Carriers PSC Inc.		In progress
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

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

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2009-031	Q-Line Trucking Ltd.		Postponed
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	Bison Diversified Inc. o/a Bison		In progress
<i>Special Import Measures Act</i>			
AP-2008-006	Cobra Anchors Co. Ltd.	May 8, 2009	Appeal allowed
AP-2008-010	EMCO Electric International – Electrical Resource International	June 25, 2009	Appeal allowed

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. Brief summaries of a representative sample of such decisions follow, two appeals having been heard under the *Customs Act* and one under the *Special Import Measures Act*. These summaries have been prepared for general information purposes only and are of no legal effect.

AP-2008-006—Cobra Anchors Co. 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 2 witnesses appeared before the Tribunal. The official record consisted of 25 exhibits.

This was an appeal pursuant to section 61 of the *Special Import Measures Act* from decisions of the CBSA with respect to requests for re-determinations pursuant to section 59. The issue in this appeal was whether six different anchoring kits presented as sealed clamshell-type retail packages containing two zinc “shields” and two steel “lag bolts” of a length and diameter that work with the shields imported by Cobra Anchors Co. Ltd. were of the same description as the goods subject to the Tribunal’s findings in Inquiry No. NQ-2004-005, *Certain Fasteners*, and therefore subject to the imposition of anti-dumping duties.

On May 8, 2009, the Tribunal concluded the following: (1) the goods in issue, at the time of their importation, were pre-packaged anchoring kits not covered by the physical description of the subject goods in the Tribunal’s findings in *Certain Fasteners*; (2) the anchoring kits had specialized end-use applications in respect of certain surfaces, in respect of which a lag bolt alone would not be functionally effective, necessitating the inclusion of the shield in the anchoring kit; (3) anchoring systems and lag bolts are not

directly interchangeable products; (4) anchoring systems and lag bolts do not compete with each other in the marketplace; and (5) anchoring kits are marketed differently from lag bolts in terms of mode of sale and price, with the latter typically sold in bulk at a significantly lower price.

The Tribunal found that the steel lag bolt and zinc shield were both essential to the functionality and proper use of the anchoring system and, therefore, that the component parts of the kit could not be separated for the purpose of applying anti-dumping duties under *SIMA*.

Consequently, the Tribunal found that the goods in issue did not meet the description of the goods subject to the Tribunal's findings in *Certain Fasteners*, and the appeal was allowed.

AP-2008-012—P.L. Light Systems Canada 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 4 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), in response to the dispute of an advance ruling. The issue in this appeal was whether aluminum reflectors for lighting, in addition to being classified under tariff item No. 9405.99.00 of the schedule to the *Customs Tariff*, should be classified under tariff item No. 9903.00.00 as articles and materials that enter into the cost of manufacture or repair of, or articles for use in, agricultural or horticultural machines of heading No. 84.36 and thereby benefit from duty-free treatment.

The Tribunal agreed with P.L. Light Systems Canada Inc. that the goods in issue were used in lighting systems for commercial greenhouses used for horticultural and agricultural purposes and determined that, based on dictionary definitions, the lighting fixtures were “machines” because they utilized a source of energy (electricity) and transformed it into light. The Tribunal therefore concluded that the lighting fixtures were machines of heading No. 84.36. Moreover, the Tribunal determined that the goods in issue were integral parts with regard to the functioning of the lighting fixtures once they had been attached.

Accordingly, on September 16, 2009, the Tribunal found that the goods in issue should be classified under tariff item No. 9405.99.00 and were entitled to the benefits of tariff item No. 9903.00.00. The appeal was therefore allowed.

AP-2008-023—Entrelec Inc. (ABB Canada) 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 19 exhibits.

This was an appeal pursuant to subsection 67(1) of the former *Customs Act* from decisions of the CBSA, made pursuant to subsection 63(3) of the former *Customs Act*, concerning requests for re-determinations. The issue in this appeal was whether various electrical components imported by Entrelec Inc. (ABB Canada) (Entrelec) qualified for the benefits of Code 2101 of Schedule II to the former *Customs Tariff* (Code 2101), which provides, among other things, for the duty-free entry of articles for use in process control apparatus of tariff item No. 9032.89.20 of Schedule I to the former *Customs Tariff*.

The Tribunal agreed with the parties that the various electrical components were capable of being used in process control apparatus of tariff item No. 9032.89.20. However, at issue was whether sufficient evidence had been provided to determine whether the various electrical components were actually used in process control apparatus and, hence, qualified for the benefits of Code 2101.

On December 17, 2009, the Tribunal found that there were a number of deficiencies in the scope and quality of the evidence provided by Entrelec. First, the evidence did not cover all the importations of the various electrical components, and it was unclear to what extent the evidence was representative of the importations as a whole. Second, the Tribunal was not satisfied that the evidence that was provided was reliable, given the lack of invoices and similar source documents, and the fact that the witness for Entrelec lacked first-hand knowledge of the summary information filed. In light of the foregoing, the Tribunal considered that the evidence did not indicate that any of the various electrical components were for use in process control apparatus of tariff item No. 9032.89.20 and that, therefore, the various electrical components did not qualify for the benefits of Code 2101. Accordingly, the appeal was dismissed.

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
AP-2002-008	The Russo Group Inc.	The Russo Group Inc.	T—1332—03
AP-2002-034 to AP-2002-037	Pierre Roy et Associés Inc. for Lithochrome (1974) Inc. (in bankruptcy), Le Groupe Lithochrome Inc. (in bankruptcy), Filmographie P.F. Inc. (in bankruptcy) and Opticouleur Inc. (in bankruptcy)	Pierre Roy et Associés Inc. for Lithochrome (1974) Inc. (in bankruptcy), Le Groupe Lithochrome Inc. (in bankruptcy), Filmographie P.F. Inc. (in bankruptcy) and Opticouleur Inc. (in bankruptcy)	T—1134—05 Appeals discontinued (January 14, 2010)
AP-2004-018R	Gladu Tools Inc.	Gladu Tools Inc.	A—195—08 Appeal dismissed (June 23, 2009)
AP-2005-027	Les Huiles Thuot et Beauchemin Inc.	Les Huiles Thuot et Beauchemin Inc.	T—618—06 Appeal dismissed (January 21, 2010)
AP-2006-018	Pelco Worldwide Headquarters	Pelco Worldwide Headquarters	A—572—07 Appeal discontinued (April 20, 2009)
AP-2006-036	Location Robert Ltée	Location Robert Ltée	T—878—08 Appeal dismissed (May 20, 2009)
AP-2006-037	Transport Robert (1973) Ltée	Transport Robert (1973) Ltée	T—879—08 Appeal dismissed (May 20, 2009)
AP-2006-054	Helly Hansen Leisure Canada Inc.	Helly Hansen Leisure Canada Inc.	A—428—08 Appeal dismissed (November 26, 2009)
AP-2007-006	Clothes Line Apparel, Division of 2810221 Canada Inc.	Clothes Line Apparel, Division of 2810221 Canada Inc.	A—516—08 Appeal dismissed (December 9, 2009)
AP-2007-011	Standard Products Inc.	Standard Products Inc.	A—619—08 Appeal dismissed (January 25, 2010)
AP-2007-017	North American Tea & Coffee Inc.	North American Tea & Coffee Inc.	A—201—09 Appeal dismissed (December 16, 2009)
AP-2007-024	1068827 Ontario Inc. o/a Grace Motors	1068827 Ontario Inc. o/a Grace Motors	A—621—08
AP-2007-028	Automed Technologies Inc.	Automed Technologies Inc.	A—279—09
AP-2008-012	P.L. Light Systems Canada Inc.	President of the Canada Border Services Agency	A—497—09
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

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.

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

	2008-2009	2009-2010
Requests		
Received	3	-
Withdrawn	1	-
Awaiting the initiation of an investigation	1	-
Investigations completed during the fiscal year	3	-
Investigations in progress at end of the fiscal year	1	-
Recommendations to the Minister of Finance		
Tariff relief	3	2
No tariff relief	-	-
Reports to the Minister of Finance	3	2
Cumulative totals (since 1994)		
Requests received	187	187
Recommendations to the Minister of Finance		
Tariff relief	113	115
No tariff relief	49	49

During the fiscal year, the Tribunal received no requests for tariff relief. The Tribunal issued two reports to the Minister of Finance, one of which dealt with an investigation that was initiated in the previous fiscal year and the other dealt with a request that was under consideration at the end of the previous fiscal year.

Disposition of Requests

Request No.	Requester	Textile Input	Date of Disposition	Status/Recommendations
TR-2008-002	St. Geneve	Fabric	August 10, 2009	Indeterminate tariff relief
TR-2008-003	Caskets Vic Royal, a Division of Victoriaville Funeral Supplies Inc.	Fabric	May 12, 2009	Indeterminate tariff relief

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, 2009.

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, 2009, the Tribunal estimates that the tariff items listed in the table at the end of this chapter covered imports worth about \$150 million and provided tariff relief worth about \$14.8 million. For the comparable period in 2008, these amounts were about \$198 million and about \$20.1 million respectively. The decrease in the value of tariff relief in 2009 is reflective of the smaller value of imports.

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, 2009, tariff relief principally affected textile inputs falling in three chapters: Chapter 51 ("Wool, fine or coarse animal hair; horsehair yarn and woven fabric"); Chapter 52 ("Cotton"); and Chapter 54 ("Man-made filaments"). The percentage of total imports accounted for by the imports benefiting from tariff relief, falling in these 12 chapters, ranged from 0 to 41.3 percent. Overall, approximately 0.68 percent of total imports falling in the 12 chapters benefit from tariff relief. The following table provides, for calendar year 2009, 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	41.30
52	Cotton	10.00
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	4.40
54	Man-made filaments	12.50
55	Man-made staple fibres	6.00
56	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.60
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	1.40
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	2.80
60	Knitted or crocheted fabrics	1.00
70	Glass and glassware	0.20
Weighted average		0.68

Source: Statistics Canada

Summary of Recommendations

A summary of the Tribunal's recommendations issued during the fiscal year follows. These summaries have been prepared for general information purposes only and are of no legal effect.

TR-2008-002—St. Geneve

In its investigation, the Tribunal sent seven questionnaires to domestic producers and users and/or importers of the subject textile input. Of the seven questionnaires sent, no completed questionnaires were received. The Tribunal held a file hearing, but a staff investigation report was not prepared. Tribunal exhibits were not distributed, and the Tribunal proceeded directly with its recommendation to the Minister of Finance.

On August 10, 2009, the Tribunal recommended to the Minister of Finance that tariff relief be granted, for an indeterminate period of time, on importations from all countries of:

- (1) woven fabric, solely of cotton, bleached, of a width exceeding 280 cm, having a sum of yarns per 10 cm in the warp and the weft of 1,070 or more, of tariff item No. 5208.29.99, for use in the manufacture of bed linen, duvet covers, pillow shams, cushions and cushion covers;
- (2) woven fabric, solely of cotton, of a width exceeding 280 cm, having a sum of yarns per 10 cm in the warp and the weft of 730 or more, of tariff item No. 5208.32.90, for use in the manufacture of bed linen, duvet covers, pillow shams, cushions and cushion covers;

- (3) woven fabric, solely of cotton, of a width exceeding 280 cm, having a sum of yarns per 10 cm in the warp and the weft of 1,080 or more, of tariff item No. 5208.39.90, for use in the manufacture of bed linen, duvet covers, pillow shams, cushions and cushion covers;
- (4) woven fabric, solely of cotton, of a width exceeding 280 cm, having a sum of yarns per 10 cm in the warp and the weft of 830 or more, of tariff item No. 5209.39.90, for use in the manufacture of bed linen, duvet covers, pillow shams, cushions and cushion covers;
- (5) woven fabric, solely of flax, dyed, of a width exceeding 280 cm, having a sum of yarns per 10 cm in the warp and the weft of 410 or more, of tariff item No. 5309.19.90, for use in the manufacture of bed linen, duvet covers, pillow shams, cushions and cushion covers;
- (6) woven fabric, solely of rayon, bleached, of a width exceeding 280 cm, having a sum of yarns per 10 cm in the warp and the weft of 1,060 or more, of tariff item No. 5516.11.00, for use in the manufacture of bed linen, duvet covers, pillow shams, cushions and cushion covers; and
- (7) woven fabric, solely of rayon, dyed, of a width exceeding 280 cm, having a sum of yarns per 10 cm in the warp and the weft of 1,085 or more, of tariff item No. 5516.12.90, for use in the manufacture of bed linen, duvet covers, pillow shams, cushions and cushion covers.

St. Geneve, of Richmond, British Columbia, requested the tariff relief. Northern Feather Canada Ltd., a domestic producer of bed linen, advised the Tribunal that it supported the request. Three domestic fabric producers, PGI/DIFCO Performance Fabrics Inc., Doubletex and Consoltex Inc., advised the Tribunal that they did not oppose the request.

The Tribunal concluded that tariff relief would result in yearly benefits to users of the subject fabrics in excess of \$35,000.

TR-2008-003—Caskets Vic Royal, A Division of Victoriaville Funeral Supplies Inc.

In its investigation, the Tribunal sent 21 questionnaires to domestic producers and users and/or importers of the subject textile input. Of the 21 questionnaires sent, one completed questionnaire was received. The Tribunal held a file hearing, but a staff investigation report was not prepared. Tribunal exhibits were not distributed, and the Tribunal proceeded directly with its recommendation to the Minister of Finance.

On May 12, 2009, the Tribunal recommended to the Minister of Finance that tariff relief be granted, for an indeterminate period of time, on importations from all countries of warp pile fabric, cut, solely of polyester, including the ground fabric, brushed, of tariff item No. 6001.92.90, for use in the manufacture of coffin interiors.

Caskets Vic Royal, a Division of Victoriaville Funeral Supplies Inc., of Victoriaville, Quebec, requested the tariff relief. No domestic fabric producers contested the claim that there was no domestic production of identical or substitutable fabrics.

The Tribunal concluded that tariff relief would result in yearly benefits to users of these fabrics in excess of \$35,000.

Tariff Relief Recommendations in Place

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2009
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
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

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, 2009
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
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

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, 2009
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
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

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, 2009
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
TA-2003-001	TE-2003-001 TE-2001-001 TE-98-002 (TR-94-002 and TR-94-002A)	Ring-spun yarns	5205.14.20 5205.15.00 ¹ 5205.24.20 5205.26.00 ¹ 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
<ol style="list-style-type: none"> 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. 			