

# **ANNUAL REPORT**

**FOR THE FISCAL YEAR ENDING  
MARCH 31, 2018**

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July 3, 2018

It is my pleasure to present the Annual Report summarizing the Canadian International Trade Tribunal's activities, highlights and successes for the recently concluded year of April 1, 2017 to March 31, 2018.

During the last fiscal year, the Tribunal heard a high volume of cases, and we expect that trend to continue, especially given the current trade climate.

The Tribunal takes pride in its global reputation for excellence and has earned the confidence of its stakeholders, including Canadian and international businesses, foreign governments and the Canadian public.

Excellence, fairness, transparency and accessibility are the Tribunal's core values. They are actively implemented in day-to-day operations, and play a key role in the successful achievement of our mandate as they have guided the Tribunal's work over the last year. In particular, the Tribunal has been working closely with its Advisory Committee to enhance accessibility for small and medium-sized enterprises and will continue to interact with business organizations about our work and processes.

The Tribunal continues to work towards simplifying its practices and procedures, to alleviate the administrative burden on organizations, in favour of better accessibility. To that end, the Tribunal continues its progress towards an increasingly electronic docket and implementing e-solutions such as electronic filing and videoconferencing options. These changes are leading the way to the future and have the potential to improve the manner in which the Tribunal conducts its business, ensuring a fair, transparent and accessible process for all parties.

In the following pages, the Tribunal outlines its working procedures, and presents a short summary of some of the trade remedy injury inquiries, procurement inquiries, as well as the customs and excise appeals cases heard over the past year.

Sincerely,

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

Jean Bédard, Q.C.  
Chairperson  
Canadian International Trade Tribunal



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## CHAPTER 1

# SUMMARY

The Canadian International Trade Tribunal is recognized, both here at home and on the international stage, as a centre of excellence in the fair and timely resolution of trade law matters. The Tribunal is a quasi-judicial body which provides Canadian and international businesses with access to fair, transparent and timely trade remedy and federal government procurement inquiries, and customs and excise tax appeals. At the request of the Government, the Tribunal provides advice in economic and tariff matters.

## History of the Tribunal

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

1931	The Tariff Board was established to inquire into economic matters referred to it by the Minister of Finance.
1969	The Canadian Import Tribunal was originally established in 1969 as the Anti-dumping Tribunal. Its name change reflected a broader mandate to conduct injury inquiries in both anti-dumping and countervailing duty proceedings under the <i>Special Import Measures Act (SIMA)</i> , as well as in safeguard cases.
1970s	The Tribunal's third predecessor, the Textile and Clothing Board, was formed in the early 1970s and inquired into safeguard complaints by the Canadian textile and apparel industries.
1994	The Tribunal absorbed the Procurement Review Board, extending the Tribunal's mandate to include inquiries into whether federal procurement processes have been carried out in accordance with Canada's domestic and international trade obligations.
2014	November 1, 2014 saw the establishment of the Administrative Tribunals Support Service of Canada (ATSSC) upon which the Tribunal relies on for support services and facilities.

## Anti-Dumping Injury Inquiries

The Tribunal plays a significant role within Canada's trade remedy system. Under *SIMA*, the Tribunal determines whether the dumping and subsidizing of imported goods cause injury or threaten to cause injury to a domestic industry. The Tribunal issued 21 trade remedies decisions during the fiscal year—compared to 12 the year before. These decisions related primarily to the steel sector, but also concerned products such as silicon metal, polyethylene terephthalate resin, liquid dielectric transformers, copper pipe fittings, and dry wheat pasta. All the decisions were issued within the tight deadlines set out in *SIMA*.

**Dumping** occurs when a foreign producer exports at a price that is lower than their normal value (generally, either the domestic selling price of comparable goods in the country of export, or the constructed cost of production of the goods exported to Canada).

**Subsidizing** occurs when goods imported into Canada benefit from foreign government financial assistance.

## Procurement Inquiries

During fiscal year 2017-2018, the Tribunal received 67 complaints pertaining to more than \$4.5 billion in federal procurement. The Tribunal issued 66 decisions on whether to accept complaints for injury. The Tribunal also issued 27 final decisions on merit where complaints were accepted for inquiry. Combined, this represented a total of 93 decisions compared to 94 the year before. All procurement review decisions were issued within legislated deadlines.

## Customs and Excise Appeals

A total of 68 appeals were filed during the reporting period, up from 52 the year before. The Tribunal issued 28 decisions under the *Customs Act*. All of the appeals were decided within 120 days of being heard by the Tribunal, exceeding the Tribunal's target of 90%. The average appeal was decided within 72 days of hearing, down 15 days from the previous year.

# Caseload

The first table below contains statistics pertaining to the Tribunal's caseload for 2017-2018. The second table contains statistics relating to other case-related activities in 2017-2018. These statistics illustrate the complexity and diversity of the cases considered by the Tribunal.

## Tribunal Caseload Overview—2017-2018

	Cases Brought Forward From Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions to Initiate	Decisions Not to Initiate	Total Decisions/ Reports Issued	Cases Withdrawn/ Closed	Cases Outstanding (March 31, 2018)
<b>Trade remedies</b>								
Preliminary injury inquiries	1	4	5	N/A	N/A	5	0	0
Inquiries	2	5	7	N/A	N/A	5	0	2
Requests for public interest inquiries	0	0	0	0	0	0	0	0
Public interest inquiries	0	0	0	0	0	0	0	0
Requests for interim reviews	1	1	2	0	1	1	0	1
Interim reviews	1	0	1	N/A	N/A	1	0	0
Expiries <sup>1</sup>	1	5	6	6	0	6	0	0
Expiry reviews	1	6	7	N/A	N/A	2	0	5
Remanded cases	0	1	1	N/A	N/A	1	0	0
<b>TOTAL</b>	<b>7</b>	<b>22</b>	<b>29</b>	<b>6</b>	<b>1</b>	<b>21</b>	<b>0</b>	<b>8</b>
<b>Procurement</b>								
Complaints received	2	67	69	25	41	66	2	1
Complaints accepted for inquiry	7	N/A	7	N/A	N/A	17	10	5
Remanded cases <sup>2</sup>	0	1	1	N/A	N/A	1	N/A	0
<b>TOTAL</b>	<b>9</b>	<b>68</b>	<b>77</b>	<b>25</b>	<b>41</b>	<b>84</b>	<b>12</b>	<b>6</b>
<b>Appeals</b>								
Extensions of time								
<i>Customs Act</i>	1	1	2	N/A	N/A	2	0	0
<i>Excise Tax Act</i>	0	0	0	N/A	N/A	0	0	0
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>N/A</b>	<b>N/A</b>	<b>2</b>	<b>0</b>	<b>0</b>
Appeals								
<i>Customs Act</i>	39	65	104	N/A	N/A	28	19	57
<i>Excise Tax Act</i>	0	2	2	N/A	N/A	0	2	0
<i>Special Import Measures Act</i>	0	1	1	N/A	N/A	0	0	1
Remanded cases	0	0	0	N/A	N/A	0	0	0
<b>TOTAL</b>	<b>39</b>	<b>68</b>	<b>107</b>	<b>N/A</b>	<b>N/A</b>	<b>28</b>	<b>21</b>	<b>58</b>
<sup>1</sup> With respect to expiries, "decisions to initiate" refer to decisions to initiate expiry reviews. <sup>2</sup> Where a single remand decision is issued in respect of multiple cases, it is accounted for as a single remanded case. N/A = Not applicable								

## Statistics Relating to Case Activities in 2017-2018

	Trade Remedy Activities	Procurement Review Activities	Appeals	Standing Textile Reference	TOTAL
<b>Orders</b>					
Disclosure orders	28	0	0	0	28
Cost award orders	N/A	7	N/A	N/A	7
Compensation orders	N/A	2	N/A	N/A	2
Production orders	1	1	1	0	3
Postponement of award orders	N/A	8	N/A	N/A	8
Rescission of postponement of award orders	N/A	5	N/A	N/A	5
<b>Directions/administrative rulings</b>					
Requests for information	150	0	0	0	150
Motions	1	5	2	0	8
Subpoenas	3	0	0	0	3
<b>Other statistics</b>					
Public hearing days	21	2	20	0	43
File hearings <sup>1</sup>	15	68	11	0	94
Witnesses	83	2	31	0	116
Participants	170	105	100	0	374
Questionnaire replies	276	0	0	0	276
Pages of official records <sup>2</sup>	106,526	45,169	30,046	0	181,741
<sup>1.</sup> A file hearing occurs where the Tribunal renders a decision on the basis of written submissions, without holding a public hearing. <sup>2.</sup> Estimated. N/A = Not applicable					



## **CHAPTER II**

# **MANDATE, ORGANIZATION AND ACTIVITIES**

### **Introduction**

The Tribunal is a quasi-judicial body that carries out its responsibilities in an independent and impartial manner. It reports to Parliament through the Minister of Finance. The Tribunal's strategic outcome is the fair, timely and transparent disposition of its cases.

The Tribunal is mandated to act within five key areas:

Anti-dumping Injury Inquiries	To inquire into and decide whether dumped and/or subsidized imports have caused, or are threatening to cause, injury to a domestic industry.
Procurement Inquiries	To inquire into complaints by potential suppliers concerning procurement by the federal government and decide whether the federal government breached its obligations under certain trade agreements to which Canada is party.
Customs and Excise Appeals	To hear and decide appeals of decisions of the Canada Border Services Agency made under the Customs Act and the Special Import Measures Act (SIMA) and of the Minister of National Revenue made under the Excise Tax Act
Economic and Tariff Inquiries	To 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
Safeguard Inquiries	To 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.

## How the Tribunal Does its Work

The Tribunal is a court of record and has the powers, rights and privileges as are vested in a superior court with regard to procedural matters necessary or proper for the due exercise of its jurisdiction. For instance, the Tribunal can subpoena witnesses and require parties to produce information. At the same time, however, the Tribunal carries out its proceedings as informally and expeditiously as the circumstances and considerations of fairness permit.

The Tribunal provides individuals and businesses with the opportunity to submit their evidence and views and to respond to other parties before it makes a final decision. Access to companies' confidential information is strictly controlled. Protecting confidential information against unauthorized disclosure is of the utmost importance to the Tribunal.

Frequently, the Tribunal holds hearings to allow parties to call witnesses and explain their points of view and present arguments. Hearings are open to the public and are usually held at the Tribunal's offices in Ottawa, Ontario, but may be held elsewhere in Canada depending on the specific circumstances of a given case. Parties may also participate in electronic hearings (e.g. through video conference technology). The Tribunal may also base its decisions solely on the written information filed before it or collected during the proceedings without a hearing.

The Tribunal has little control over the volume and complexity of its workload and faces tight statutory deadlines for most of its cases. The Tribunal's Web site serves as a repository of all information relating to decisions and their accompanying statements of reasons.

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

## Members of the Tribunal

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

Throughout the year, the Acting Chairperson of the Tribunal was Mr. Jean Bédard. The other permanent members of the Tribunal during the year were Ms. Ann Penner, Mr. Daniel Petit, Mr. Peter Burn, Ms. Rose Ritcey and Mr. Jason W. Downey, who resigned from the Tribunal in November 2017. Mr. Petit's term expired in September 2017, while Ms. Penner's term expired in January 2018. Mr. Serge Fréchette, a former permanent member, was reappointed to a temporary member position and served in that capacity throughout the year.

## Outreach

The Tribunal's Advisory Committee is made up of a cross-section of legal counsel, business associations and governmental officials. Its purpose is to provide recommendations to enhance the accessibility, fairness and transparency of the Tribunal's rules and procedures. It provided its annual report to the Tribunal on April 30, 2017. The Tribunal responded on June 27, 2017, and commented on the recommendations. The Tribunal met with the Advisory Committee twice during the year. The Tribunal will

continue working with the Advisory Committee to reduce costs and enhance fairness and accessibility for all parties, especially for small- and medium-sized businesses.

The Acting Chairperson spoke at the Seoul International Forum on Trade Remedies on June 12, 2017, about the Tribunal's observance of WTO dispute settlement decisions regarding trade remedies. He also spoke on a panel at the annual World Trade Law Meeting in September, 2017 and at the Georgetown Law Center's annual Trade Law Update in March, 2018

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

Any person affected by Tribunal findings or orders under section 43, 44, 76.01, 76.02 or 76.03 of *SIMA* can apply for judicial review by the Federal Court of Appeal on grounds of, for instance, denial of natural justice or error of law. Any person affected by Tribunal procurement findings and recommendations under the *CITT Act* can similarly request judicial review by the Federal Court of Appeal under sections 18.1 and 28 of the *Federal Courts Act*. Lastly, Tribunal orders and decisions made pursuant to the *Customs Act* can be appealed under that act to the Federal Court of Appeal or, under the *Excise Tax Act*, to the Federal Court. The Federal Court of Appeal heard appeals or judicial reviews on 17 decisions of the Tribunal in 2017-2018. One of those decisions was overturned or remanded.

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

Tribunal findings or orders under sections 43, 44, 76.01, 76.02 and 76.03 of *SIMA* involving goods from the United States and Mexico may be reviewed by a binational panel established under *NAFTA*. A request for a binational panel from the preceding year was withdrawn during the past year and no new requests were made.

## **WTO Dispute Resolution**

Governments that are members of the WTO may challenge the Government of Canada in respect of Tribunal injury findings or orders in dumping and countervailing duty cases before the WTO Dispute Settlement Body (DSB). This is initiated by intergovernmental consultations under the WTO Dispute Settlement Understanding. During the last fiscal year, no Tribunal matters were before the DSB.





# ANTI-DUMPING INJURY INQUIRIES

## Process

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

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

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

## Preliminary Injury Inquiries

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

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

If the Tribunal finds that there is a reasonable indication that the dumping or subsidizing has caused injury or retardation, or is threatening to cause injury, it makes a determination to that effect, and the CBSA

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

## Preliminary Injury Inquiry Activities

**The Tribunal completed 5 preliminary injury inquiries in the fiscal year.**

	PI-2016-004	PI-2017-001	PI-2017-002	PI-2017-003	PI-2017-004
<b>Product</b>	Silicon metal	Carbon and alloy steel line pipe	Polyethylene Terephthalate Resin	Copper Pipe Fittings	Dry Wheat Pasta
<b>Type of case/country</b>	Dumping/Brazil, Kazakhstan, Laos, Malaysia, Norway, Russia and Thailand Subsidizing/Brazil, Kazakhstan, Malaysia and Norway	Dumping/Korea	Dumping and subsidizing/China, India, Oman and Pakistan	Dumping and subsidizing/Vietnam	Dumping and subsidizing/Turkey
<b>Date of determination</b>	April 21, 2017	August 8, 2017	October 17, 2017	December 27, 2017	February 26, 2018
<b>Determination</b>	Reasonable indication of injury or threat of injury	Reasonable indication of injury or threat of injury	Reasonable indication of injury or threat of injury	Reasonable indication of injury or threat of injury	Reasonable indication of injury or threat of injury
<b>Participants</b>	25	2	7	2	4
<b>Pages of official record</b>	4,875	3,874	3,594	3,447	3,256

## Final Injury Inquiries

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

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

In conducting final injury inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. Questionnaires are sent to Canadian producers, importers, purchasers, foreign producers and exporters. Primarily on the basis of questionnaire responses, an investigation report is prepared, which is put on the case record and is made available to counsel and parties.

Parties participating in the proceedings may present their own cases or may be represented by counsel. Confidential or business-sensitive information is protected in accordance with provisions of the *CITT Act* and is only available to counsel and experts who are approved by the Tribunal.

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

dumped or subsidized goods on domestic production, sales, market share, profits, employment and utilization of domestic production capacity.

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

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

## Final Injury Inquiry Activities

**The Tribunal completed 7 final injury inquiries in the fiscal year.**

	NQ-2016-003	NQ-2016-004	NQ-2017-001	NQ-2017-002	NQ-2017-003	NQ-2017-004	NQ-2017-005
<b>Product</b>	Concrete reinforcing rebar	Certain fabricated industrial steel components	Silicon Metal	Carbon and Alloy Steel Line Pipe	Polyethylene Terephthalate Resin	Copper Pipe Fittings	Dry Wheat Pasta
<b>Type of case/country</b>	Dumping/Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain	Dumping and subsidizing/ China, Korea, Spain and United Kingdom	Dumping and subsidizing/ Brazil, Kazakhstan, Lao, Malaysia, Norway and Thailand	Dumping/Korea	Dumping and subsidizing/ China, India, Oman and Pakistan	Dumping and subsidizing/ Vietnam	Dumping and subsidizing/ Turkey
<b>Date of finding</b>	May 3, 2017	May 25, 2017	November 2, 2017	January 4, 2018	March 16, 2018	In progress	In progress
<b>Finding</b>	Injury	Injury	No injury	Injury	No injury		
<b>Questionnaires sent</b>	122	301	44	64	72		
<b>Questionnaires received</b>	33	67	39	44	37		
<b>Requests for exclusions</b>	2	22	2	1	1		
<b>Requests for exclusions granted</b>	1	3	N/A	1	N/A		
<b>Participants</b>	14	22	17	8	17		
<b>Pages of official record</b>	8,037	27,736	12,605	8,386	11,653		
<b>Public hearing days</b>	3	6	4	2	5		
<b>Witnesses</b>	13	22	12	12	21		

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

There were 2 final injury inquiries in progress at the end of the fiscal year concerning copper pipe fittings and dry wheat pasta.

## **Public Interest Inquiries**

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

The Tribunal did not have any public interest inquiries during the fiscal year.

## **Interim Reviews**

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

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

## Interim Review Activities

The Tribunal completed 2 interim reviews during the fiscal year, concerning certain fasteners and oil country tubular goods.

	Interim Review No. RD-2016-002	Request for Interim Review No. RD-2016-003	Request for Interim Review No. RD-2017-001
<b>Product</b>	Hot-rolled carbon steel plate	Certain fasteners	Oil Country Tubular Goods
<b>Type of case/country</b>	Dumping and subsidizing/Ukraine	Dumping and subsidizing/China and Chinese Taipei	Dumping/Chinese Taipei, India, Indonesia, Philippines, Korea, Thailand, Turkey, Ukraine and Vietnam
<b>Date of order or of withdrawal</b>	In abeyance	July 12, 2017	October 25, 2017
<b>Order</b>		Continues order with amendments	No review
<b>Participants</b>		4	7
<b>Pages of official record</b>		225	157

## 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 two months before the expiry date of the finding or order, the Tribunal publishes a notice of expiry in the *Canada Gazette*. The notice invites persons and governments to submit their views on whether the order or finding should be reviewed and gives direction on the issues that should be addressed in the submissions. If the Tribunal determines that an expiry review is not warranted, it issues an order with reasons for its decision. Otherwise, it initiates an expiry review.

## Expiry Activities

	LE-2016-002	LE-2017-001	LE-2017-002	LE-2017-003	LE-2017-004	LE-2017-005
<b>Product</b>	Stainless steel sinks	Liquid dielectric transformers	Steel piling pipe	Carbon steel welded pipe	Hot-rolled carbon steel plate	Seamless carbon or alloy steel oil and gas well casing
<b>Type of case/country</b>	Dumping and subsidizing/China	Dumping/Korea	Dumping and subsidizing/China	Dumping and subsidizing/Chinese Taipei, India, Oman, Korea, Thailand, Turkey, United Arab Emirates	Dumping/China	Dumping and subsidizing/China
<b>Date of order or notice of expiry review</b>	April 4, 2017	July 25, 2017	August 28, 2017	December 8, 2017	October 3, 2017	January 19, 2018
<b>Decision</b>	Expiry review initiated	Expiry review initiated	Expiry review initiated	Expiry review initiated	Expiry review initiated	Expiry review initiated
<b>Participants</b>	2	6	3	10	4	5
<b>Pages of official record</b>	260	1,605	397	1,129	913	1,278

## Expiry Reviews

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

The purpose of an expiry review is to determine whether anti-dumping or countervailing duties remain necessary. There are two phases in an expiry review. The first phase is the investigation by the CBSA to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the finding or order expires. If the CBSA determines that such likelihood exists with respect to any of the goods, the second phase is the Tribunal's inquiry into the likelihood of injury or retardation arising from the resumption or continuation of the dumping or subsidizing. 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

The Tribunal completed 2 expiry reviews in the fiscal year, and there were five expiry reviews in progress at the end of the fiscal year.

	RR-2016-001	RR-2017-001	RR-2017-002	RR-2017-003	RR-2017-004	RR-2017-005	RR-2017-006
<b>Product</b>	Pup joints	Stainless steel sinks	Liquid dielectric transformers	Steel piling pipe	Hot-rolled carbon steel plate	Carbon steel welded pipe	Seamless carbon or alloy steel oil and gas well casing
<b>Type of case/country</b>	Dumping and subsidizing/China	Dumping and subsidizing/China	Dumping/Korea	Dumping and subsidizing/China	Dumping/China	Dumping and subsidizing/Chinese Taipei, India, Oman, Korea, Thailand, Turkey, United Arab Emirates	Dumping and subsidizing/China
<b>Date of order</b>	April 7, 2017	February 8, 2018	In progress	In progress	In progress	In progress	In progress
<b>Order</b>	Finding continued	Finding continued					
<b>Questionnaires sent<sup>1</sup></b>	159	188					
<b>Questionnaires received<sup>2</sup></b>	29	27					
<b>Participants</b>	4	2					
<b>Pages of official record</b>	7,400	5,035					
<b>Public hearing days</b>	File hearing	File hearing					
<b>Witnesses</b>	0	0					

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 in Progress at the End of the Fiscal Year

There were 5 expiry reviews in progress at the end of the fiscal year.

## Sample of Noteworthy Decisions

Of the *SIMA* cases carried out by the Tribunal during the past year, certain decisions stand out. Brief summaries of a representative sample of these cases are included below. These summaries have been prepared for general information purposes only.

NQ-2012-003R Carbon Steel Welded Pipe

LE-2017-003 Carbon Steel Welded Pipe

RD-2017-001 Oil Country Tubular Goods and

NQ-2016-003 Concrete Reinforcing Bar

All of the above decisions related in whole or in part to the 2015-2016 WTO dispute involving Canada, where Chinese Taipei successfully challenged aspects of *SIMA* measures on carbon steel welded pipe. In its report of December 21, 2016, the WTO panel determined that the CBSA final determination and

the Tribunal's finding, as they related to two Chinese Taipei exporters with *de minimis* margins of dumping, were inconsistent with the WTO Anti-Dumping Agreement.

In April 2017 in Inquiry No. NQ-2016-003, the Tribunal conducted an inquiry into a complaint alleging that domestic producers had been injured or were being threatened with injury by the dumping of concrete reinforcing bar ("rebar") from Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain. In its reasons for the decision made on May 3, 2017, the Tribunal found that significant volumes of dumped rebar entering the Canadian market in 2015 and 2016, and the resulting downward pressure on the price of domestic rebar, prevented the domestic industry from increasing its prices in the face of rising production costs (i.e. price suppression). Due to such volumes and price effects, the dumped goods caused material injury to the domestic industry. Having regard to the WTO panel report in the carbon steel welded pipe case, the Tribunal exercised its discretionary authority under subsection 43(1) of *SIMA* to exclude goods exported by Feng Hsin, an exporter with a *de minimis* dumping margin.

In RD-2017-001, decided on October 25, 2017, however, the Tribunal denied a request for interim review made by Borusan Mannesmann Boru (BMB), a Turkish producer and exporter of oil country tubular goods (OCTG) with a dumping margin of zero. BMB requested an interim review of the Tribunal's finding in Inquiry No. NQ-2014-002 in light of the WTO panel report and the Tribunal's subsequent exclusion of an exporter with a *de minimis* dumping margin in the rebar case. BMB submitted that the WTO ruling and decisions of the Tribunal subsequent to the OCTG finding constitute changed circumstances that warrant an interim review. The Tribunal disagreed and pointed to the need for finality of its previous decisions. Additionally, the Tribunal cited a request by the Minister of Finance to the Tribunal pursuant to section 76.1 of *SIMA* as a possible avenue of relief for BMB.

On December 8, 2017, in Inquiry No. NQ-2012-003R, the Tribunal reviewed the threat of injury determination it had made in Inquiry No. NQ-2012-003 regarding the carbon steel welded pipe from Chinese Taipei as well as the United Arab Emirates (the UAE), which was the subject of the WTO panel report. This review followed a request by the Minister of Finance pursuant to section 76.1 to "review its threat of injury finding in respect of certain carbon steel welded pipe originating in or exported from Chinese Taipei having regard to the DSB recommendations and rulings in DS482." The Minister made a similar request to the CBSA and, as a result of its review, the CBSA terminated its dumping investigation in respect of the Chinese Taipei exporters with *de minimis* margins of dumping. As a consequence of this determination of the CBSA and fresh amendments to *SIMA* to implement the WTO panel report, those exporters were no longer subject to the Tribunal's finding. The Tribunal received submissions from various domestic producers who argued in support of the Tribunal continuing its threat of injury finding, and from Conares Metal Supply Ltd. (Conares)—a *de minimis* exporter from the UAE—in favour of its goods being excluded from the finding. However, the Tribunal determined that it did not have the authority to exclude Conares' good from its finding as it was outside the scope of the Minister's request.

At the same time, however, in Notice of Expiry Proceeding No. LE-2017-003, which was conducted in parallel with Inquiry No. NQ-2012-003R, the Tribunal determined that an expiry review of the finding in relation to Conares was not warranted. The Tribunal stated that the treatment that Conares' exports have received under *SIMA* has been contrary to the Anti-Dumping Agreement; it should never have been subject to the finding in the first place because its exports were neither dumped nor subsidized. As a result, the Tribunal found that it cannot be a reasonable indication that the expiry of the finding will likely result in the continued or resumed dumping of Conares' goods given that they were not dumped in the first place. Therefore, the finding in relation to goods exported by Conares was allowed to expire. The Tribunal added that in any upcoming notice of expiry proceedings, it would consider extending this treatment to other exporters who had *de minimis* margins of dumping (or amounts of subsidy). The Tribunal confirmed that, while it did not foresee partial expiry reviews in other circumstances (e.g. initiating an expiry review in

respect of one country's goods but not another's), the extraordinary circumstances of the present case warranted a departure from the Tribunal's usual approach.

## Judicial or Panel Reviews of *SIMA* Decisions

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

### Summary of Judicial or Panel Reviews

Case No.	Product	Country of Origin	Court File No./Status
NQ-2015-001	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	India and Russia	A-46-16 Application dismissed (August 9, 2017)
NQ-2016-002	Gypsum board	United States	CDA-USA-2017-1904-01 Discontinued (July 11, 2017)
NQ-2016-004	Certain Fabricated Industrial Steel Components	China, Korea and Spain	A-193-17 In progress
NQ-2016-004	Certain Fabricated Industrial Steel Components	China, Korea and Spain	A-195-17 In progress
NQ-2016-004	Certain Fabricated Industrial Steel Components	China, Korea and Spain	A-196-17 In progress
NQ-2017-001	Silicon Metal	Brazil, Kazakhstan, Malaysia, Norway and Thailand	A-398-17 In progress
LE-2017-003	Carbon Steel Welded Pipe	Chinese Taipei, India, Oman, Korea, Thailand, Turkey and United Arab Emirates	A-11-18 In progress
<p>Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not ordinarily participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.</p>			



## CHAPTER IV

# PROCUREMENT INQUIRIES

### Introduction

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

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

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

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

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

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

## Procurement Complaints

### Summary of Activities

During the fiscal year, the Tribunal issued 66 decisions on whether to accept complaints for inquiry and 27 final decisions on complaints that were accepted for inquiry, for a total of 93 decisions. Six cases were still in progress at the end of the fiscal year, one of which was still under consideration for being accepted for inquiry.

	2016-2017	2017-2018
<b>Number of procurement cases received</b>		
Carried over from previous fiscal year	8	9
Received in fiscal year	70	67
<b>Total</b>	<b>78</b>	<b>76</b>
<b>Disposition—Complaints accepted for inquiry</b>		
Dismissed	-	2
Not valid	7	7
Valid or valid in part	16	7
Ceased	6	11
Withdrawn/abandoned	3	-
<b>Subtotal</b>	<b>32</b>	<b>27</b>
<b>Disposition—Complaints not accepted for inquiry</b>		
Lack of jurisdiction/not a potential supplier	3	2
Late filing	8	18
Not a designated contract/no reasonable indication of a breach/premature	22	21
Withdrawn/abandoned	4	2
<b>Subtotal</b>	<b>37</b>	<b>43</b>
<b>Outstanding at end of fiscal year</b>	<b>9</b>	<b>6</b>
<b>Decisions to initiate</b>	<b>32</b>	<b>25</b>
<b>Remanded cases</b>	<b>-</b>	<b>1</b>

### Sample of Noteworthy Decisions

Of the procurement complaints inquired into by the Tribunal, certain decisions stand out. Brief summaries of a representative sample of these cases are included below. These summaries have been prepared for general information purposes only.

PR-2015-051 and PR-2015-067 Oshkosh Defence Canada Inc. (Compensation Order)

On the merits, the Tribunal found that the Department of National Defence's (DND) testing of military vehicles proposed by Oshkosh Defence Canada Inc. (Oshkosh) was flawed. As a remedy, the Tribunal recommended that DND either re-test Oshkosh's vehicles in accordance with the solicitation's terms or compensate Oshkosh for its losses. When DND concluded that re-testing would be impractical, the Tribunal began its compensation inquiry.

The compensation phase lasted over a year. Parties' submissions included six affidavits, four expert reports, and several requests to strike or compel disclosure of documents. The volume of submissions exceeded 2,000 pages.

Given the magnitude and complexity of the claim, the Tribunal took the opportunity to explain in detail how it analyzes compensation claims consistent with its governing legislation. The Tribunal ultimately recommended an award of \$25.3 million, representing one third of Oshkosh's lost profits for the initial five-year term of the solicitation contract. It also recommended that Oshkosh be awarded one third of its lost profits should PWGSC exercise any of the options under the contract awarded. Because the proceedings were unusually complex and lengthy, the Tribunal awarded Oshkosh \$153,120 in complaint costs.

An application for judicial review in regards to this matter is pending before the Federal Court of Appeal.

PR-2016-064 Leonardo S.P.A.

Leonardo S.P.A. (Leonardo), an Italian corporation, filed a complaint concerning the procurement of fixed-wing search and rescue aircraft and related support services by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence. Leonardo alleged that PWGSC had awarded the solicitation to a competing bidder, Airbus Defence & Space S.A. (Airbus), in breach of the applicable evaluation criteria and of Article 506 of the *Agreement on Internal Trade (AIT)*.

Further to motions filed by PWGSC and Airbus (as intervener), the Tribunal issued an order dismissing the complaint on the basis that Leonardo did not have standing to file a complaint before the Tribunal under the *AIT*. In particular, the Tribunal concluded that Leonardo was not a "Canadian supplier" within the meaning of Article 518 of the *AIT* because Leonardo (not its subsidiaries operating in Canada) was the entity that bid on the procurement and would have entered into any resulting contract. As Leonardo was incorporated and headquartered in Italy and had no place of business in Canada, it was not a "Canadian supplier".

PR-2016-056 Valcom Consulting Group Inc.

The Tribunal conducted an inquiry into a complaint filed by Valcom Consulting Group Inc. (Valcom) concerning a procurement by the Department of National Defence (DND) for the services of a senior technician. Valcom challenged DND's decision to terminate and re-tender the resulting contract that was initially awarded to Valcom.

DND moved that the Tribunal cease its inquiry, on the grounds that the termination involved a matter of contract administration outside of the Tribunal's jurisdiction. The Tribunal denied the motion, finding that the termination fell within its mandate to hear complaints regarding "any aspect of the procurement process", pursuant to subsection 30.11(1) of the *CITT Act*. Because DND had terminated the initial contract award due to concerns with the solicitation process, and Valcom's complaint challenged those concerns, the complaint pertained to the procurement process.

The Tribunal found the complaint valid on the merits. It recommended that Valcom be awarded the resulting contract and be compensated for any lost profits for services already rendered by another supplier.

An application for judicial review in regards to this matter is pending before the Federal Court of Appeal.

## **Judicial Review of Procurement Decisions**

### *Attorney General of Canada v. Hewlett-Packard (Canada) Co., 2017 FCA 227*

Hewlett-Packard (Canada) Co. (HP) filed a complaint (PR-2016-043) challenging Shared Service Canada's (SSC) evaluation of HP's proposal regarding a solicitation for a high-performance computing solution for atmospheric and other scientific research. SSC filed a motion to strike the complaint for lack of jurisdiction, based on its invocation of a national security exception (NSE) under the trade agreements. The Tribunal denied the motion, finding that SSC had not properly invoked the NSE to exclude suppliers from filing complaints with the Tribunal. However, the Tribunal ultimately upheld SSC's evaluation of HP's proposal.

Despite its success on the merits, SSC filed an application for judicial review of the Tribunal's decision denying the motion to strike. Because HP did not defend the judicial review, the Tribunal filed a motion for leave to intervene and to file a motion to strike the application on the grounds that it was moot. SSC consented to the Tribunal's motion to intervene so that there would be another party for the court to hear from. SSC contested the Tribunal's motion to strike though, arguing that the court should exercise its discretion to hear SSC's application because it raised a systemic issue. The Court dismissed SSC's application. The Court observed that SSC agreed the application was moot. The Court then found that none of the reasons provided by SSC for hearing the application despite it being moot were persuasive.

### *Attorney General of Canada v. Springcrest Inc., 2017 FCA 202*

In PR-2016-021, the Tribunal found a complaint by Springcrest Inc. (Springcrest) concerning a solicitation by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) to be valid. The procurement was for seawater pumps for Halifax class frigates of the Royal Canadian Navy. Springcrest challenged a requirement in the Request for Proposal (RFP) that all bidders except the incumbent include a shock testing certificate for the pumps in their proposals. Springcrest argued that it was impossible for any bidder to meet the requirement in the time between publication of the RFP and bid closing (62 days).

The Tribunal held that the requirement violated Article 504(3)(c) of the *Agreement on Internal Trade* (AIT), which prohibited measures regarding “the timing of events in the tender process so as to prevent suppliers from submitting bids”.

PWGSC filed an application for judicial review of the Tribunal’s decision. The Court dismissed the application. It found that the Tribunal reasonably determined that Article 504(3)(c) applied to technical requirements as well as procurement process timelines. The Court also found that it was objectively impossible for suppliers to meet the timeline set out in the RFP. Finally, the Court found that Tribunal reasonably determined that PWGSC’s legitimate operational requirements could have been met by invoking other provisions of the *AIT* to excuse compliance with Article 504(3)(c).

## Decisions Appealed to the Federal Court of Appeal

File No.	Complainant Before the Tribunal	Applicant Before the Federal Court of Appeal	Court File No./Status
PR-2015-051 and PR-2015-067	Oshkosh Defense Canada	Attorney General of Canada	A-219-16 In progress
PR-2015-051 and PR-2015-067	Oshkosh Defense Canada	Oshkosh Defense Canada	A-220-16 Application discontinued March 13, 2018
PR-2015-060	HDT Expeditionary Systems Inc.	HDT Expeditionary Systems Inc.	A-277-16 Application discontinued April 11, 2017
PR-2016-001	The Access Information Agency Inc.	The Access Information Agency Inc.	A-323-16 Application dismissed January 18, 2018
PR-2016-001	The Access Information Agency Inc.	Attorney General of Canada	A-329-16 Application dismissed January 18, 2018
PR-2016-003	Francis H.V.A.C. Services Ltd.	Francis H.V.A.C. Services Ltd.	A-359-16 Application dismissed August 9, 2017
PR-2016-021	Springcrest Inc.	Attorney General of Canada	A-462-16 Application dismissed October 5, 2017
PR-2016-027	M.D. Charlton Co. Ltd.	Attorney General of Canada	A-21-17 Application granted September 5, 2017
PR-2016-030	L.P. Royer Inc.	Attorney General of Canada	A-45-17 Application dismissed January 30, 2018
PR-2016-035	Agence Gravel Inc.	Attorney General of Canada	A-66-17 In progress
PR-2016-041	The Masha Krupp Translation Group Inc.	Attorney General of Canada	A-127-17 Application dismissed (November 22, 2017)
PR-2016-043	Hewlett-Packard (Canada) Co.	Attorney General of Canada	A-128-17 Application dismissed (November 20, 2017)
PR-2016-056	Valcom Consulting Group	Attorney General of Canada	A-220-17 In progress
PR-2017-006	Rockwell Collins Canada Inc.	Attorney General of Canada	A-295-17 In progress
PR-2017-006	Rockwell Collins Canada Inc.	Rockwell Collins Canada Inc.	A-296-17 In progress
PR-2015-051 and PR-2015-067	Oshkosh Defense Canada	Oshkosh Defense Canada	A-44-18 In progress
Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal usually does not participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.			





## CHAPTER V

# CUSTOMS AND EXCISE APPEALS

### Introduction

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

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

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

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

## Hearings

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

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

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

Within 120 days of the hearing, the Tribunal endeavours to issue a decision on the matters in dispute, including the reasons for the decision. A decision and its reasons are usually issued much sooner.

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

## Extensions of Time

Under section 60.2 of the *Customs Act*, a person may apply to the Tribunal for an extension of time to file a request for a re-determination or a further re-determination with the CBSA. The Tribunal may grant such an application after the CBSA has refused an application under section 60.1 or when 90 days have elapsed after the application was made and the person has not been notified of the CBSA's decision. Under section 67.1, a person may apply to the Tribunal for an extension of time within which to file a notice of appeal with the Tribunal. During the fiscal year, the Tribunal issued 2 orders under the *Customs Act*, granting an extension of time in 1 case. There were no outstanding requests under the *Customs Act* at the end of the fiscal year.

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

## Appeals Received and Heard

During the fiscal year, the Tribunal received 68 appeals. Fifty-either appeal cases were outstanding at the end of the fiscal year. Several of these appeals were in abeyance at the request of the parties. The Tribunal heard 24 appeals under the *Customs Act*. It issued decisions on 28 appeals under the *Customs Act*.

For a listing of all appeals and received by the Tribunal and their status, please consult the Tribunal's website.

## Sample of Noteworthy Decisions

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

### AP-2016-038 Alliance Mercantile Inc.

This appeal concerned the tariff classification of parts of footwear, namely boot bottoms consisting of an outer sole affixed to an incomplete and unfinished upper. In deciding whether the goods should be classified as parts of footwear or complete (but unfinished) footwear, the Tribunal was presented with the issue of how to interpret divergent English and French versions of an Explanatory Note adopted by the World Customs Organization (WCO). The English version provided that the goods would be footwear (as opposed to parts) if they “*may be finished* simply by trimming their top edge with a border and adding a fastening device”, while the French version used the language “*mais pouvant être fini...*”

The Tribunal applied the shared meaning rule of bilingual statutory interpretation, whereby the ordinary meaning shared by both the English and French versions of a statutory instrument is presumed to be the meaning intended by Parliament. Here, the shared meaning (as revealed by comparing the more imperative French wording to the more open-ended English wording) was that the goods *must* be finished in the manner specified (and not any other) to be footwear as opposed to parts. The goods were not finished in the manner specified and, as such, were properly classified as parts and not footwear.

The appeal was allowed.

### AP-2017-013 Apple Canada Inc.

Apple Canada Inc. (Apple) argued that an iPad Smart Case (Smart Case) is “for use in” an ADP machine<sup>1</sup> and therefore eligible for a preferential duty rate under tariff item No. 9948.00.00. The “for use in” requirement would be met only if the Smart Case was “functionally joined” to the ADP machine.

The Smart Case docked magnetically to the iPad, triggering the iPad’s sleep function when placed over the screen and activating the iPad’s wake function when removed. The CBSA argued that this interaction pertained to battery life only, not to an iPad’s main functions such as Internet browsing, video playback, etc. Apple argued that battery life and cordless autonomy are essential functional attributes of portable tablets.

The Tribunal found that a Smart Case is functionally joined to an iPad when the two are used together. It reasoned that there is a “a fundamental difference between [a Smart Case], whose magnets interface directly with several components of the iPad to efficiently regulate power use, and a regular carrying case that simply protects and positions an electronic device without engaging its programs through electromagnetic components.”

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<sup>1</sup> For customs purposes, an iPad is considered an “automated data processing machine” (ADP machine).

Accordingly, the appeal was allowed.

#### AP-2014-023 Dealers Ingredients

At issue was the tariff classification of several varieties of powdered enzyme-modified cheese and butter flavourings. The parties agreed that the goods were “preparations” of subheading No. 2106.90, but disagreed on whether they had at least 50 percent of dairy content.

The Tribunal found each party’s evidence to be lacking and underscored how this had complicated the proceedings. The Tribunal stated, for the future, that parties with similar cases should appear before it with a reliable ingredient list setting out the proportions of the dairy and other ingredients in the final formulation. The Tribunal also stated that, when presented with flawed submissions by the parties, the Tribunal’s role is not “limited to a binary choice” dictated by the burden of proof; rather, it may exercise its recognized expertise in tariff classification to make a decision on the merits.

The appeal was allowed in part and dismissed in part.

#### AP-2016-020 Sonos

At issue was whether wireless speaker systems were properly classified as mounted loudspeakers under tariff item No. 8518.22.00, as determined by the CBSA, or machines for the reception, conversion and transmission or regeneration of voice, images or other data, under tariff item No. 8517.62.00, as claimed by Sonos. Also in issue was whether the goods qualified for duty-free tariff treatment as articles “for use in” automatic data processing (ADP) machines under tariff item No. 9948.00.00.

The goods were combination loudspeaker/data networking components designed to continuously stream music over a household Wi-Fi network via Sonos’ proprietary software (the “controller app”) installed on a network-connected mobile or computing device.<sup>2</sup> The arguments turned on whether the loudspeaker component or the data networking component gave the goods their primary function.

The Tribunal found that the goods could not be considered machines under tariff item No. 8517.62.00 unless they could be classified as ADP machines under heading No. 84.71. The Tribunal determined that the goods could not be so classified because note 5(E) to Chapter 84 provided that machines incorporating or working in conjunction with ADP machines that perform a specific function other than data processing are to be classified according to that specific function. Based on witness testimony and marketing materials, the Tribunal found the primary function of the goods to be that of loudspeakers of heading No. 85.18; the data networking component merely facilitated and enhanced that function.

The Tribunal found that the goods were eligible for the benefit of tariff item No. 9948.00.00 as articles for use in ADP machines under the three-part test established in *Best Buy*.<sup>3</sup> The goods were, without dispute, “articles”. They were “for use in” a host good because they were “functionally joined”

<sup>2</sup> Note that the goods in issue did not include a network connected mobile or computing device.

<sup>3</sup> *Best Buy Canada Ltd., P & F USA Inc. and LG Electronics Canada Inc. v. President of the Canada Border Services Agency* (27 February 2017), AP-2015-036 and AP-2016-001 (CITT) [*Best Buy*].

to them via a wireless link. Finally, those host goods (computers, smart phones, etc.) were ADP machines.

Therefore, the appeal was allowed in part and dismissed in part.

#### AP-2017-003 Costco

The goods in this case were two decorative snowmen packaged together for retail sale. The CBSA classified them as made-up articles of textiles under tariff item No. 6307.90.99, while Costco argued that they were articles for Christmas festivities under tariff item No. 9505.10.00.

The key question before the Tribunal was whether the goods were “festive”. Costco argued that the goods were indeed festive given that they tend to be associated with Christmas and are sold and marketed alongside other Christmas wares. The CBSA argued that the goods in issue were associated with winter, but not with a particular holiday or festivity.

The Tribunal held that the goods do not need to be “specifically and exclusively” associated with a particular festivity in order to be classified under heading No. 95.05. The goods were designed alongside other Christmas products, sold in the Christmas aisle, possessed clothing colours commonly associated with Christmas (red and green), and were not sold for the entire winter, but rather only up to and including the month of December. The way an importer chooses to display and sell an item is not the sole determinant of how it should be classified under the *Tariff*. However, in this case, these facts, along with testimony on the goods’ design, best use, and marketing, demonstrated the articles were “festive”.

Accordingly, the appeal was allowed.

## Judicial Review of Appeals Cases

Appeal No.	Appellant Before the Tribunal	Appellant Before the Court	File No./Status
AP-2012-009	Volpak Inc.	Volpak Inc.	A-197-15 Application dismissed
AP-2014-021	Worldpac Canada Inc.	Worldpac Canada Inc.	A-154-16 Application dismissed
AP-2014-024	Globe Union (Canada) Inc.	Attorney General of Canada	A-477-16 Application dismissed
AP-2015-028	First Jewelry Ltd.	First Jewelry Ltd.	A-62-17 Application dismissed
AP-2016-017	RBP Imports Inc.	Attorney General of Canada	A-224-17 In progress
AP-2015-014	Costco Wholesale Canada Ltd.	Costco Wholesale Canada Ltd.	A-322-17 Application discontinued
AP-2016-027	Best Buy Canada Ltd.	Attorney General of Canada	A-324-17 In progress
Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not always participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.			



