



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

ANNUAL REPORT

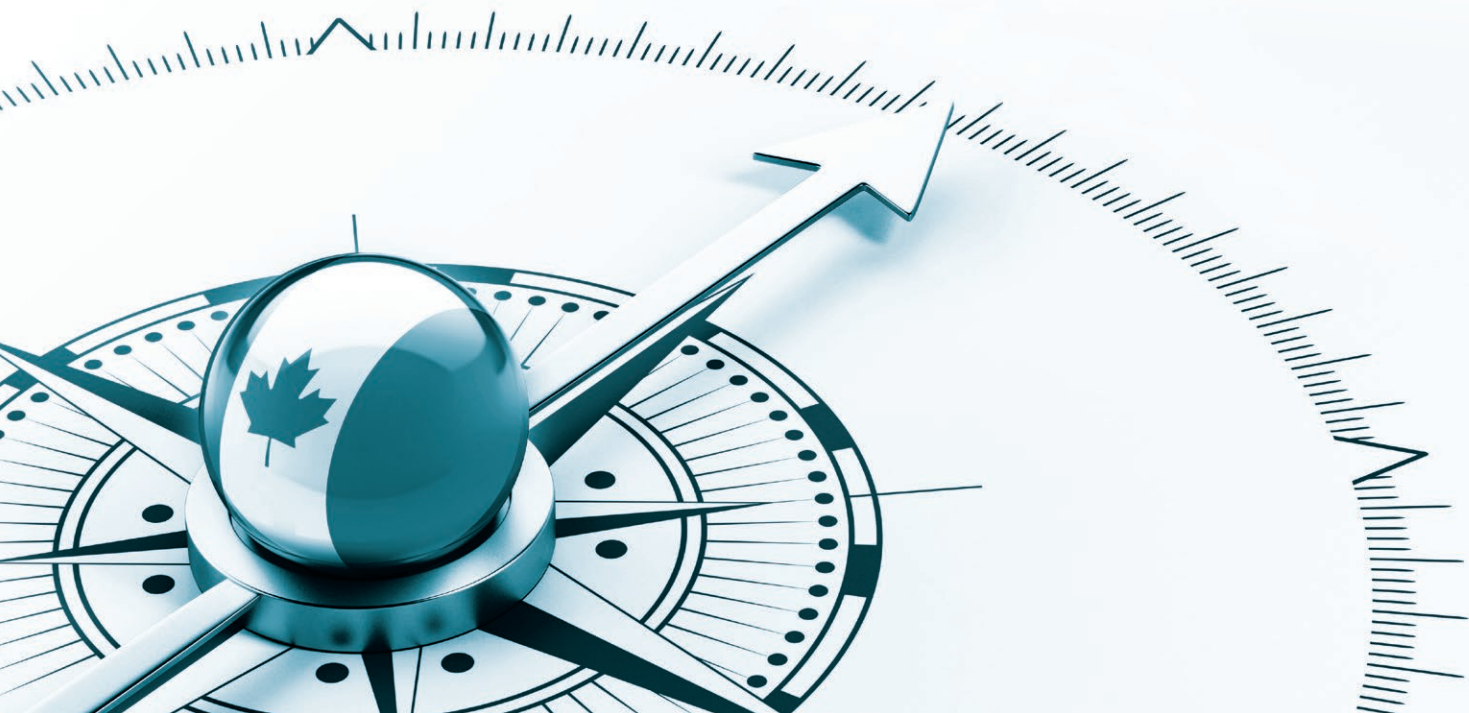
FOR THE FISCAL YEAR ENDING MARCH 31, 2019



CANADIAN INTERNATIONAL TRADE TRIBUNAL

Canada 

*The CITT provides
Canadian and international
businesses with access
to fair, transparent
and timely processes
and adjudication.*



MESSAGE FROM THE CHAIRPERSON

July 3, 2019

It is my pleasure to present the Annual Report for the Canadian International Trade Tribunal for the period of April 1, 2018, to March 31, 2019, and in doing so to underscore the following developments and successes.

Further to extensive consultations with stakeholders, the *Canadian International Trade Tribunal Rules* were modernized in order to provide for greater efficiencies and cost savings to parties appearing before the Tribunal.

The Tribunal's volume in trade remedies cases increased again, as it had in recent years. This high volume will persist, notably because the Tribunal will conduct several expiry reviews during the current and upcoming fiscal years.

Without a doubt the Tribunal's single biggest endeavour during this period was the Safeguard Inquiry into Certain Steel Goods that the Governor in Council referred to the Tribunal in October 2018. This was a major undertaking involving seven steel product categories. The Tribunal held hearings in January 2019 and issued a final report and recommendations in April 2019.

The Tribunal heard several important procurement reviews and customs appeals cases during the period. Volume of cases in these mandates remains constant, of a high dollar value, and continues to raise questions of importance to Canadian and foreign stakeholders, including domestic small and medium enterprises.

Excellence, fairness, transparency and accessibility remain central to the Tribunal's values and guide the manner in which it hears its cases and makes its decisions. The Tribunal strives to ensure that its processes are simple and accessible, and that the confidential information that is required in its proceedings is stringently protected. The recent amendments to the *CITT Rules* underscore and renew the Tribunal's commitment to ensuring straightforward and easy access to administrative justice for all parties. In this regard, the Tribunal

Excellence, fairness, transparency and accessibility remain central to the Tribunal's values and guide the manner in which it hears its cases and makes its decisions.

has been working closely with the CITT Advisory Committee to constantly examine options for improvements. The Tribunal has already established an infrastructure that greatly facilitates the use of videoconference hearings, and has made its records entirely electronic.

The pages that follow provide details of the Tribunal's activities over the past year.

Again this year, I want to thank the staff of the Tribunal's Secretariat. The Tribunal takes pride in its global reputation for excellence. It has earned the confidence of its stakeholders, including Canadian businesses. This would not have been possible without the professionalism and the dedication of the staff of the Secretariat that supports the Tribunal in fulfilling its mandates. Their work brings great repute to the Tribunal, the Public Service and to Canadians.

Sincerely,

JEAN BÉDARD, Q.C.

Chairperson
Canadian International Trade Tribunal

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CHAPTER 1 SUMMARY

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 inquiries, 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 1930s. In 1994, the Tribunal absorbed the Procurement Review Board. In 2014, the staff and budget of the Tribunal were transferred to the Administrative Tribunals Support Service of Canada (ATSSC). Its staff is now part of the CITT Secretariat of the ATSSC.

1931 The Tariff Board was established to inquire into economic matters referred to it by the Minister of Finance. The powers of the Board of Customs are also transferred to the Tariff Board.

1969 The Canadian Import Tribunal was originally established as the Anti-dumping Tribunal. Its name change reflected a broader mandate to conduct injury inquiries in both anti-dumping and countervailing duty proceedings under the *Special Import Measures Act (SIMA)*, as well as in safeguard cases.

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.

TRADE REMEDY 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 27 trade remedies decisions plus one safeguard decision during the fiscal year—compared to 21 the year before. These decisions related primarily to the steel sector, but also concerned products such as silicon metal, gypsum board, and nitrofurantoin capsules. 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 2018-2019, the Tribunal received 69 complaints pertaining to more than \$15 billion in federal procurement. The Tribunal issued 64 decisions on whether to accept complaints for injury. The Tribunal also issued 28 final decisions on merit where complaints were accepted for inquiry. Combined, this represented a total of 92 decisions compared to 93 the year before. All procurement review decisions were issued within legislated deadlines.

CUSTOMS AND EXCISE APPEALS

A total of 70 appeals were filed (69 under the *Customs Act*, and one under *SIMA*) during the reporting period, and 4 extension of time requests were received. The Tribunal issued 20 appeal decisions and one remand decision under the *Customs Act*. All of the appeals were decided within 120 days of being heard by the Tribunal.

CASELOAD

The first table below contains statistics pertaining to the Tribunal's caseload for 2018-2019. The second table contains statistics relating to other case-related activities in 2018-2019. These statistics illustrate the complexity and diversity of the cases considered by the Tribunal.

TRIBUNAL CASELOAD OVERVIEW–2018-2019

	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, 2019)
Trade remedies								
Preliminary injury inquiries	0	6	6	N/A	1	5	0	0
Inquiries	2	5	7	N/A	N/A	6	0	1
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	1	0	1	0	1
Interim reviews	0	1	1	N/A	N/A	1	0	0
Expiries ¹	0	9	9	8	0	8	0	1
Expiry reviews	5	8	13	N/A	N/A	6	0	7
Safeguards	0	1	1	N/A	N/A	0	0	1
Remanded cases	0	0	0	N/A	N/A	0	0	0
TOTAL	8	31	39	9	1	27	0	11

1. With respect to expiries, "decisions to initiate" refer to decisions to initiate expiry reviews.

TRIBUNAL CASELOAD OVERVIEW–2018-2019

	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, 2019)
Procurement								
Complaints received	1	69	70	28	36	64	3	3
Complaints accepted for inquiry	5	N/A	5	N/A	N/A	28	0	5
Remanded cases ²	0	0	0	N/A	N/A	0	N/A	0
TOTAL	6	69	75	28	36	92	3	8
Appeals								
Extensions of time								
<i>Customs Act</i>	0	4	4	N/A	N/A	3	0	1
<i>Excise Tax Act</i>	0	0	0	N/A	N/A	0	0	0
TOTAL	0	4	4	N/A	N/A	3	0	1
Appeals								
<i>Customs Act</i>	57	69	126	N/A	N/A	20	21	85
<i>Excise Tax Act</i>	0	0	0	N/A	N/A	0	0	0
<i>Special Import Measures Act</i>	1	1	2	N/A	N/A	0	2	0
Remanded cases	0	2	2	N/A	N/A	1	0	1
TOTAL	58	72	130	N/A	N/A	21	23	86

2. 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

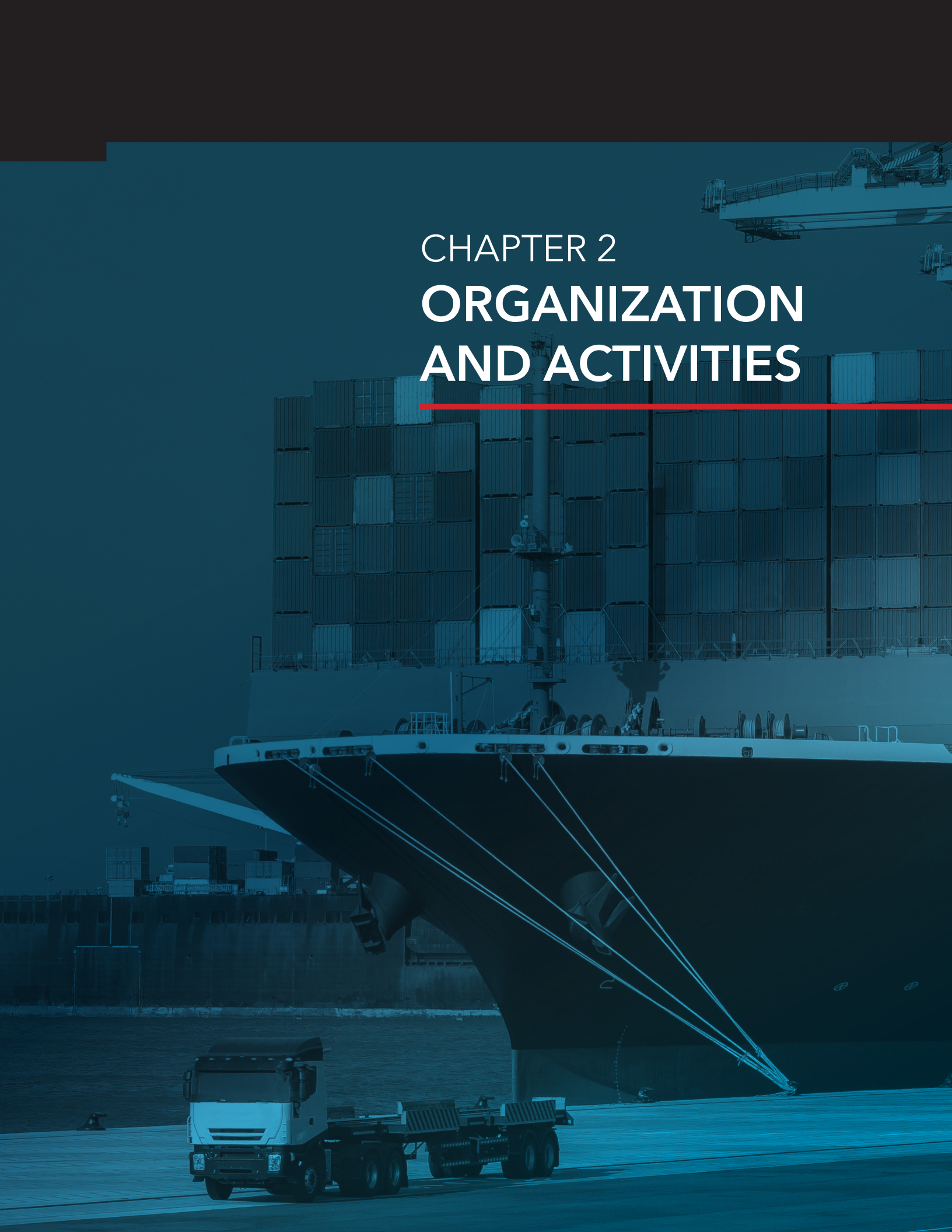
STATISTICS RELATING TO CASE ACTIVITIES IN 2018-2019

	Trade Remedy Activities	Procurement Review Activities	Appeals	Standing Textile Reference	TOTAL
Orders					
Disclosure orders	36	0	0	0	36
Cost award orders	N/A	16	N/A	N/A	16
Compensation orders	N/A	2	N/A	N/A	2
Production orders	5	0	0	0	5
Postponement of award orders	N/A	1	N/A	N/A	1
Rescission of postponement of award orders	N/A	1	N/A	N/A	1
Directions/administrative rulings					
Requests for information	223	0	0	0	223
Motions	1	8	1	0	10
Subpoenas	12	0	0	0	12
Other statistics					
Public hearing days	24	0	15	0	39
File hearings ¹	20	66	11	0	97
Witnesses	86	0	28	0	114
Participants	175	106	100	0	381
Questionnaire replies	387	0	0	0	387
Pages of official records ²	174,684	51,460	26,208	0	252,352

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

2. Estimated.

N/A = Not applicable

The background image is a photograph of a large container ship docked at a port. The ship is filled with stacks of colorful shipping containers. In the foreground, a white truck is parked on the pier. The entire image is overlaid with a semi-transparent blue filter. The text 'CHAPTER 2 ORGANIZATION AND ACTIVITIES' is centered in the upper half of the image, with a red horizontal line underlining the title.

CHAPTER 2 ORGANIZATION AND ACTIVITIES

CHAPTER 2 – ORGANIZATION AND ACTIVITIES

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.

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 extremely important for 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 headquarters 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 conferencing technology). The Tribunal may also base its decisions solely on the written information filed before it or collected during the proceedings without a hearing.

Hearings are open to the public and are usually held at the Tribunal's headquarters in Ottawa.

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 and a Vice-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. Up to five temporary members may also be appointed. Members have a variety of educational backgrounds and experience.

Mr. Jean Bédard is the Chairperson of the Tribunal. He was appointed to this position on May 3, 2018. This year also saw the appointment of a Vice-Chairperson, Ms. Rose Ann Ritcey, on March 4, 2019. The other permanent members of the Tribunal as of March 31, 2019 were Ms. Susan Beaubien, Ms. Cheryl Beckett, Mr. Georges Bujold and Mr. Peter Burn. Ms. Beaubien, Ms. Beckett and Mr. Bujold were appointed during the fiscal year. Ms. Ann Penner and Mr. Serge Fréchette, former permanent members, were reappointed to temporary member positions and served in that capacity during the year. Mr. Randolph W. Heggart was also appointed as a temporary member in June 2018. Ms. Caterina Ardito-Toffolo was also a temporary member during the months of October, November and December 2018.

***The Chairperson
assigns cases to
members and
manages the
Tribunal's work.***

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

May 3, 2018. The Tribunal responded on July 19, 2018, and commented on the recommendations.

The Tribunal met with the Advisory Committee once during the year. A meeting scheduled for the fall of 2018 was postponed due to the exceptionally heavy trade remedies hearing schedule. 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 Chairperson spoke at the annual World Customs Law Meeting in September 2018 and spoke on a panel at the International Bar Association in October 2018. He also spoke at a colloquium for students in the Master of Public and International Affairs Program at Glendon College (York University) in Toronto, in October 2018.



CHAPTER 3

MANDATES



CHAPTER 3 – MANDATES

The Tribunal is mandated to act within five key areas:

Anti-dumping and Subsidizing 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 (CBSA) 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 that increased imports are causing, or threatening to cause, serious injury to domestic producers and, as directed, make recommendations to the Government on an appropriate remedy.

MANDATE: DUMPING AND SUBSIDIZING INQUIRIES

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 six preliminary injury inquiries in the fiscal year. In one of these, the Tribunal determined that there was no reasonable indication that the dumping had caused injury or retardation or was threatening to cause injury to the domestic industry and terminated the inquiry with respect to the subject imports.

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 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.

***The Tribunal seeks to
make all interested
parties aware of
its inquiry.***

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. The finding remains in place for a maximum of five years.

FINAL INJURY INQUIRY ACTIVITIES

The Tribunal completed six final injury inquiries in the fiscal year.

FINAL INJURY INQUIRIES IN PROGRESS AT THE END OF THE FISCAL YEAR

There was one final injury inquiry in progress at the end of the fiscal year concerning nitisinone capsules.

PUBLIC INTEREST INQUIRIES

Following a finding of injury or threat 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 positive finding, if it is of the opinion that there are reasonable grounds to consider that the imposition of all or part of the duties may not be in the public interest. If it is of this view, the Tribunal then conducts a public interest inquiry pursuant to section 45 of *SIMA*. The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by how much.

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

INTERIM REVIEWS

The Tribunal may review its findings of injury or threat of injury or other related 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 one interim review during the fiscal year and there was one interim review 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 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

The Tribunal completed eight expiries during the fiscal year and there was one expiry in progress at the end of the fiscal year.

EXPIRY REVIEWS

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

The purpose of an expiry review is to determine whether the imposition of 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 purpose of an expiry review is to determine whether the imposition of anti-dumping or countervailing duties remain necessary.

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 six expiry reviews in the fiscal year, and there were seven expiry reviews in progress at the end of the fiscal year.

MANDATE: PROCUREMENT

Potential suppliers that believe that they may have been unfairly treated during a procurement solicitation covered by the *North American Free Trade Agreement*, the *Agreement on Government Procurement*, the *Canada-Chile Free Trade Agreement*, the *Canada-Peru Free Trade Agreement*, the *Canada-Colombia Free Trade Agreement*, the *Canada-Panama Free Trade Agreement*, the *Canada-Honduras Free Trade Agreement*, the *Canada-Korea Free Trade Agreement*, the *Canada-European Union Comprehensive Economic and Trade Agreement*, the *Canadian Free Trade Agreement*, the *Canada-Ukraine Free Trade Agreement* or the *Trans-Pacific Partnership* 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.

SUMMARY OF PROCUREMENT ACTIVITIES

During the fiscal year, the Tribunal issued 64 decisions on whether to accept complaints for inquiry and 28 final decisions on complaints that were accepted for inquiry, for a total of 92 decisions. Eight cases were still in progress at the end of the fiscal year, three of which was still under consideration for being accepted for inquiry.

MANDATE: CUSTOMS AND EXCISE APPEALS

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. Some of those appeals are heard by the Tax Court of Canada, while others are heard by the Tribunal.

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 (whether 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 three orders under the *Customs Act*, granting an extension of time. There was one outstanding request under the *Customs Act* at the end of the fiscal year.

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

APPEALS RECEIVED AND HEARD

During the fiscal year, the Tribunal received 69 appeals. Eighty-five appeal cases and one remand case were outstanding at the end of the fiscal year. Thirty-seven of these appeals were in abeyance at the request of the parties. The Tribunal heard 21 appeals under the *Customs Act*. It issued decisions on 20 appeals and one remand decision under the *Customs Act*.



A blue-tinted photograph of a container yard. In the foreground, a forklift is lifting a large shipping container. The background shows several stacks of shipping containers. The text 'CHAPTER 4 SAFEGUARD REFERENCE' is overlaid on the right side of the image.

CHAPTER 4

SAFEGUARD REFERENCE

CHAPTER 4 – SAFEGUARD REFERENCE

International trade rules allow Canada to temporarily restrict imports to allow Canadian producers to adapt to increased imports which cause or threaten to cause serious injury. These temporary measures are called safeguards. The Tribunal has the authority to inquire into safeguard complaints from Canadian producers, as well as safeguard references from the Government of Canada. Complaints from Canadian producers can cover imports from all countries (global safeguards) or just imports from countries with which Canada has signed a free trade agreement (bilateral safeguards). When directed by the Government, the Tribunal may also recommend appropriate remedies to offset the harmful effects of import surges, as is the case with the recently concluded safeguard reference on certain steel goods.

On October 10, 2018, the Tribunal was directed by the *Order Referring to the Canadian International Trade Tribunal, for Inquiry into and Reporting on, the Matter of the Importation of Certain Steel Goods, P.C. 2018-1275* (Order), to conduct a safeguard inquiry concerning the importation into Canada of certain steel goods. The classes of goods subject to the inquiry were: (1) heavy plate, (2) concrete reinforcing bar, (3) energy tubular products; (4) hot-rolled sheet, (5) pre-painted steel, (6) stainless steel wire, and (7) wire rod. On October 12, 2018, the Tribunal initiated the safeguard inquiry.

The purpose of the inquiry was to determine whether any of these goods were imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of such goods.

The Order referred to the Tribunal:

- Directed the Tribunal to have regard to Canada's international trade rights and obligations.
- Provided that certain imports were to be excluded from the Tribunal's inquiry—namely, imports from the United States, Israel and other Canada-Israel Free Trade Agreement (CIFTA) beneficiaries, Chile and Mexico (with the exception of energy tubular products and wire rod from Mexico).
- Required the Tribunal, in the event it determined that there was an increase in imports, and serious injury or threat thereof, to make separate determinations regarding subject goods originating in and imported from certain free trade agreement partners. Specifically, the Tribunal had to determine if subject goods from Panama, Peru, Colombia, Honduras and Korea were a principal cause of serious injury or threat thereof.

- Required the Tribunal to determine if energy tubular products or wire rod originating in and imported from Mexico did not account for a substantial share of total imports of energy tubular products or wire rod, or did not contribute importantly to serious injury or threat thereof.
- Outlined specific treatment for imports from countries benefiting from the General Preferential Tariff (GPT).
- Instructed the Tribunal not to hear any motion to exclude any good from a class or that would otherwise limit the scope of the inquiry, determination or recommendations.
- Directed the Tribunal to provide recommendations on the most appropriate remedy to address the injury if ultimately, the inquiry showed that imports of a class of goods caused or threatened to cause serious injury.

The Tribunal's fact-finding was based primarily on a questionnaire survey of 959 domestic producers, importers, and foreign producers of the steel goods subject to the inquiry. In addition, the Tribunal sent 215 letters to embassies requesting that they forward the Notice to any firms who produce and/or export any of the steel goods and complete the foreign producers' questionnaire. The Tribunal received 327 responses.

There were 119 participants in the inquiry, including domestic producers, trade unions, importers, foreign producers and users of the goods. Several foreign governments also participated. The Tribunal held 13 days of public hearings in January 2019 and considered evidence from 44 witnesses. Parties filed written submissions and presented oral argument.

ATSSC staff involved in the inquiry included the Executive Director and General Counsel, the Director and Chief Economist, the Registrar, four core team members, twelve analysts, two data service advisors, six students, five legal counsel, six communications and editorial services staff, six registry officers, three mailroom and registry services staff for a total of 47 employees who contributed to the inquiry.

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The Tribunal submitted a report to the Governor in Council on April 3, 2019. The Tribunal found that there were no significant increases in the importation of certain subject goods from the subject countries, or that these increases had not caused serious injury and were not threatening to cause serious injury, to the domestic industry. The Tribunal therefore did not recommend a remedy in respect of the following goods:

- concrete reinforcing bar
- energy tubular products
- hot-rolled sheet
- pre-painted steel and
- wire rod.

The Tribunal did find that heavy plate and stainless steel wire from the subject countries (other than goods originating in Korea, Panama, Peru, Colombia and Honduras) were being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. The Tribunal therefore recommended a remedy in the form of a tariff rate quota on imports of heavy plate and stainless steel wire from subject countries, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for GPT treatment.



CHAPTER 5 CASE SUMMARIES AND JUDICIAL REVIEWS

CHAPTER 5 – CASE SUMMARIES AND JUDICIAL REVIEWS

The Tribunal hears hundreds of cases per fiscal year. Of the cases 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. For more information on cases and decisions, please visit the Tribunal's website.

SAMPLE OF A NOTEWORTHY DECISION UNDER THE SIMA MANDATE

PI-2018-003 - Gypsum Board

This preliminary inquiry was a result of CertainTeed Gypsum Canada Inc.'s (CTG) complaint which submitted that there was evidence that disclosed a reasonable indication that CTG had suffered material retardation, i.e. that it was unable to establish production of 54-inch gypsum board (wide board) due to the dumping of the subject goods. The complainant submitted that it had a substantial commitment to establish such production but was unable to do so with a sufficient return on sales from such production as a result of the low prices of the subject goods for sale in the regional market. Preliminarily, the Tribunal noted (i) that the complaint followed a finding of injury in the 48-inch gypsum board case (Gypsum Board (4 January 2017), NQ-2016-002 (CITT)), and (ii) there had not been a material retardation finding in Canada since 1972.

The decision found as follows:

- 1) There was a three-part test for material retardation, i.e.:
 - there is no domestic industry producing like goods.
 - the complainant has a substantial commitment to establish a domestic industry. A plan to begin production is not enough. The commitment usually has the following elements: production will begin in the near future; the venture is commercially feasible; there is an assurance that the plan will be implemented.
 - the efforts to establish a domestic industry are adversely affected to a material degree by the dumping.
- 2) In this inquiry, with respect to the second part of the above test, there was little evidence that CTG would commence production in the near future, and there was no firm assurance that it would ever produce like goods even if anti-dumping duties are imposed.

The Tribunal determined that the evidence did not disclose a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury to the domestic industry.

SAMPLE OF NOTEWORTHY DECISIONS UNDER THE APPEALS AND EXCISE MANDATE

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-2017-004 - Nouveau Americana DBA Nuevo Americana

This appeal was the lead case of a number of cases pending before the Tribunal and involving the tariff classification of furniture. At issue in this appeal was the tariff classification of several models of chairs, stools and benches. The parties disagreed as to the correct classification at the tariff item level, namely whether the goods are various types of furniture “for domestic purposes”, as submitted by the CBSA, or “for other purposes”, as submitted by the appellant.

The Tribunal, confirming its previously established test, held that goods would be “for other purposes” if it could be established that the goods in issue were either equally intended for domestic and non-domestic purposes, or primarily intended for non-domestic purposes. The Tribunal stated that, in order to determine the intended use of the goods in issue, it would consider factors such as the design, characteristics, marketing and pricing of the goods, but that these represented a non-exhaustive illustrative guideline. The Tribunal noted that, although it would expect to see at least some traces of a corroborating historical paper trail, relevant testimonial evidence can also help establish whether goods are intended for a dual purpose.

Based on the evidence and witness testimony before it, the Tribunal found that the goods in issue were equally intended for domestic and non-domestic purposes.

Accordingly, the appeal was allowed.

AP-2017-020 - Le Groupe Bugatti Inc.

This case presented an opportunity for the Tribunal to examine aspects of the *General Rules for the Interpretation of the Harmonized System* that rarely arise in tariff classification appeals, including the application of Rules 4 and 5 of the General Rules.

The goods in issue were models of writing cases with various pockets and compartments to hold and organize different items, such as pens, notepads and calculators. At the time of importation, the goods included a notepad and some also included a calculator. The CBSA argued that the goods were properly classified as writing cases, whereas the appellant argued that the goods were properly classified as notepads.

The Tribunal found that the goods could not be conclusively classified in accordance with Rule 1 and that Rule 2 of the General Rules did not apply in the circumstances. The Tribunal therefore considered Rules 3, 4 and 5. The Tribunal noted that the classification analysis with respect to these rules required a determination on what gives the goods their “essential character” and found, on the evidence, that the writing case gave the whole its essential character. As a result, the Tribunal held that Rule 5 does not apply, as one of the criteria for classification under this rule is that the container must not give the whole its essential character.

The Tribunal turned to Rule 3 and found that the goods were a set composed of several different articles classifiable under Rule 3(b) according to the component that gives the whole its essential character, i.e. the writing case. In doing so, the Tribunal noted that it would have reached the same conclusion under Rule 4, which requires that goods that cannot be classified according to Rules 1 through 3 are classified in the heading appropriate to the goods to which they are most akin. The Tribunal found that the goods were more akin to writing cases of heading No. 42.02 than memorandum pads of heading No. 48.20.

Accordingly, the appeal was dismissed.

EP-2018-001 – Full Bore Marketing Inc.

This application considered the circumstances in which it is just and equitable to grant an extension of time to request a re-determination under subsection 60(1) of the *Customs Act*. The applicant applied to the Tribunal for an extension of time, pursuant to subsection 60.2(1) of the *Act*, after the President of the CBSA denied the application. The parties agreed that the applicant met three of the four conditions set out in subsection 60.2(4) necessary to grant an extension. At issue was whether the applicant demonstrated that it would be just and equitable to grant the application, as required under paragraph 60.2(4)(b)(ii).

The Tribunal considered the length of the delay, the consequences to the applicant if the application is not granted, the potential unfairness faced by other importers if the application is granted, and the reasons for the delay. In this case, the applicant had missed the deadline by 5 days due to its representative's overseas absence and an administrative error.

On the evidence, the Tribunal found that the applicant made an honest mistake which it promptly attempted to rectify. The Tribunal also found that the full harm to the applicant in denying the application would be significant, whereas granting the application in the circumstances of a short delay would not negatively affect other importers or place undue burden on the CBSA. The Tribunal held that in such circumstances, it would be just and equitable to grant the extension.

Accordingly, the application was granted.

JUDICIAL OR PANEL REVIEWS OF TRIBUNAL DECISIONS

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.

Judicial Review of *SIMA* Cases

During the reporting period, there were two Tribunal decisions that were brought forth before the Federal Court of Appeal under section 76 of *SIMA* in the fiscal year.

Judicial Review of Procurement Cases

There were eight Procurement decisions that were brought forth before the Federal Court of Appeal in the fiscal year.

Judicial Review of Appeals Cases

There were three Tribunal decisions under the Customs Appeals and Excise Tax mandate that were brought forth to the Federal Court of Appeal during the reporting period.

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.