



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur



CANADIAN INTERNATIONAL
TRADE TRIBUNAL

ANNUAL REPORT

For the fiscal year ending March 31, 2022



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The background of the page is a solid dark blue. Overlaid on this are several large, flowing, organic shapes in lighter shades of blue. These shapes resemble stylized waves or the folds of a garment, creating a sense of movement and depth. The shapes are layered, with some appearing more prominent than others, and they generally curve from the bottom left towards the top right.



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LAND ACKNOWLEDGEMENT

We have prepared this report in the Ottawa-Gatineau region,
the unceded traditional territory of the Algonquin Anishinaabeg peoples.
They have lived on this territory for millennia. Their culture and presence have
nurtured this land and continue to do so.

The Tribunal members and staff honour the peoples and land of the Algonquins
and all First Nations, Inuit and Métis peoples.

We invite you to learn more about the people who have inhabited the land you are on.

We recognize that we still have much to learn: reconciliation is an
ongoing process for us all.



CHAIRPERSON MESSAGE

June 30, 2022

In accordance with section 41 of the *Canadian International Trade Tribunal Act*, I am pleased to present the Tribunal's annual report for the period of April 1, 2021, to March 31, 2022. This report summarizes the activities, highlights and successes of the Tribunal over the past year.

It has been a busy year for the Canadian International Trade Tribunal. The Tribunal, effectively supported by all Secretariat staff, continued to operate mainly by telework due to COVID-19 workplace access restrictions in effect throughout the year. Building on the lessons learned during the early stages of the pandemic, the Tribunal was able to operate at maximum efficiency this year.

The Tribunal's decisions have a major impact on every sector of the Canadian economy. As an independent, quasi-judicial body with jurisdiction to inquire into whether the dumping or subsidizing of imported goods has caused injury, to hear appeals in customs and excise matters and to inquire into government procurement complaints, the Tribunal contributes to Canada's compliance with its obligations under trade agreements and to ensuring that businesses and Canadians have ready access to an impartial recourse mechanism to resolve important disputes they may have with contracting government institutions or the Canada Border Services Agency. Every day, my colleagues and I strive to carry out this mission in the most efficient and fair manner for interested parties, in keeping with the principles of natural justice and procedural fairness.

The trade remedies mandate continues to be the cornerstone of the Tribunal's activities. With the prospect of economic recovery still uncertain both domestically and globally, Canadian industries are very concerned about the impact that dumping and subsidization practices may have on their operations. This explains the unprecedented number of injury inquiries covering new products conducted over the past year. In fact, the Tribunal conducted four preliminary and nine final inquiries covering a wide range of goods such as steel products, consumer goods (such as upholstered seating), agricultural products or transportation equipment (such as container chassis) and industrial equipment (such as small power transformers).

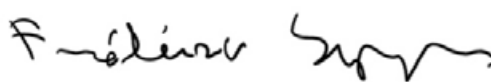
The upward trend in the number of procurement complaints filed with the Tribunal continues. While the number of new cases filed in 2021-22 is lower than the previous year's record high, the number of decisions rendered by the Tribunal under this mandate reached an all-time high, approaching 100 decisions with reasons. In addition, 41% of the complaints submitted to the Tribunal were accepted for inquiry, a proportion similar to that observed last year. Particularly with respect to procurement reviews, the Tribunal is intended to be a recourse of easy access for complainants, especially small and medium-sized enterprises. It is a telling fact that, once again this year, nearly three out of four complainants were unrepresented.

The Tribunal's performance on tariff classification appeals continues to be largely constrained by the very tight legislative deadlines that the Tribunal must meet in trade remedy and procurement cases, and the associated workload for the members and staff of the Secretariat. This resulted in too many decisions having been issued past the 120-day post-hearing service standard. The Tribunal is working to mitigate these negative impacts on parties.

The Tribunal continues to benefit greatly from the advice of the CITT's Advisory Committee, which consists of representatives of the parties who regularly appear before the Tribunal and of associations representing industry. In the fall of 2021, the Tribunal saw new members join the Advisory Committee and the appointment of Mr. Paul Conlin as the new Chair of the Committee, succeeding Mr. Lawrence Herman, who skilfully led the Committee for five years. I would like to express our deepest gratitude to Mr. Herman for the excellent advice he provided to the Tribunal during his tenure.

On behalf of the Tribunal, I would also like to acknowledge the outstanding contributions of three senior staff members who have served the CITT Secretariat with professionalism and diligence over the past few years and whose acting assignments ended during the fiscal year: Mr. Greg Gallo (Acting Executive Director since April 2019), Mr. Michel Parent (Acting Director of Investigation and Innovation Services since April 2019) and Mr. Eric Wildhaber (Acting General Counsel since August 2020). We were also pleased to welcome Ms. Lune Arpin as General Counsel of the Tribunal last fall and Ms. Gillian Burnett as Executive Director this spring.

The members of the Tribunal are entering fiscal year 2022-23 with determination. As the Tribunal gradually transitions to a new normal, it continues to reflect on the future of its operations. Several measures that the Tribunal adopted during this exceptional period, including virtual hearings and a "paperless" environment, are here to stay. Access to justice, particularly for small and medium sized enterprises, and the transparency of our decisions, will remain key priorities. In addition, the cyclical nature of trade remedy reviews means that we already know that the year ahead will be a busy one. Finally, the legislative amendments proposed in Bill C-19, currently before Parliament, will, if passed, expand the criteria for inquiries and the opportunities for unions to bring dumping and subsidizing complaints. The Tribunal is ready to face these new challenges.



Frédéric Seppey
Chairperson

OUR YEAR IN NUMBERS

Over
\$790 M
approximate value
of contracts associated
with PR decisions.

89

new procurement complaints:
25% more than the running 10-year average.



130

witnesses appeared before the Tribunal virtually.



400,644

electronic pages
handled by the Tribunal.



The effects of
SIMA duties applied to

**\$2.5 B of
imports, and
\$10.4 B of shipments**
in industries employing just under
30,000 employees.



We heard customs
appeals on interesting
products such as
LED lights,
coconut milk,
and **smart scales.**

WHAT WE DO

The Canadian International Trade Tribunal is recognized, in Canada and on the international stage, as a centre of excellence in the delivery of fair and timely resolution of trade disputes.

The Tribunal provides Canadian and international businesses with fair, transparent and timely [decisions](#) and [determinations](#) on trade remedy inquiries, federal government procurement inquiries, and customs duties and excise tax appeals. At the request of the Government, the Tribunal can also provide advice in economic and tariff matters.

The Tribunal is a [quasi-judicial](#) institution that is independent of the Government. It reports to Parliament through the Minister of Finance. It conducts its proceedings as informally and expeditiously as the circumstances and considerations of fairness permit.

The Tribunal has little control over the volume and complexity of its workload and faces tight statutory deadlines for most of its cases.



Trade remedy inquiries

Under the [Special Import Measures Act](#) (SIMA), the Tribunal determines whether the dumping or subsidizing of imported goods has caused injury or is threatening to cause injury to a domestic industry. Dumping means that foreign producers are selling their goods in the Canadian market for less than the price in their home markets or at prices lower than the cost of production. Subsidizing means that the imported goods have benefited from certain types of financial or other supports by foreign governments. These practices may result in imports flooding the Canadian market at low prices and harming Canadian producers of these goods.

If the Tribunal determines that imported goods are causing injury or threatening to cause injury to a domestic industry, then [anti-dumping](#) or [countervailing](#) duties apply to the imports for a period of five years. These duties can be rescinded early under [certain circumstances](#) and expire after five years, unless the Tribunal initiates an expiry review.

This year saw a wide variety of goods subject to inquiries: steel products, upholstered domestic seating, small power transformers, container chassis and wheat gluten.

Procurement inquiries

The Tribunal can inquire into complaints by [potential suppliers](#) who were not successful in winning a government contract for certain goods or services. It decides whether the federal government broke its procurement obligations under [certain trade agreements](#). It considers whether bids were evaluated fairly and according to the terms and conditions of a procurement process. It can recommend remedies and award costs.

Customs and excise appeals

The Tribunal hears and decides appeals of decisions made by the Canada Border Services Agency under the [Customs Act](#) and SIMA. Appeals under the [Customs Act](#) relate to tariff classification, value for duty and origin of imported goods. Appeals under SIMA relate to whether certain goods fall within the scope of trade remedy measures that are in force or to the normal value, export price or amount of subsidy in relation to imported goods subject to an injury finding. The Tribunal also hears and decides appeals of decisions of the Minister of National Revenue made under the [Excise Tax Act](#). These appeals relate to assessments or determinations of excise tax.

Safeguard inquiries

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 inquires into safeguard complaints from Canadian producers and safeguard references from the Government of Canada.

Economic and tariff inquiries

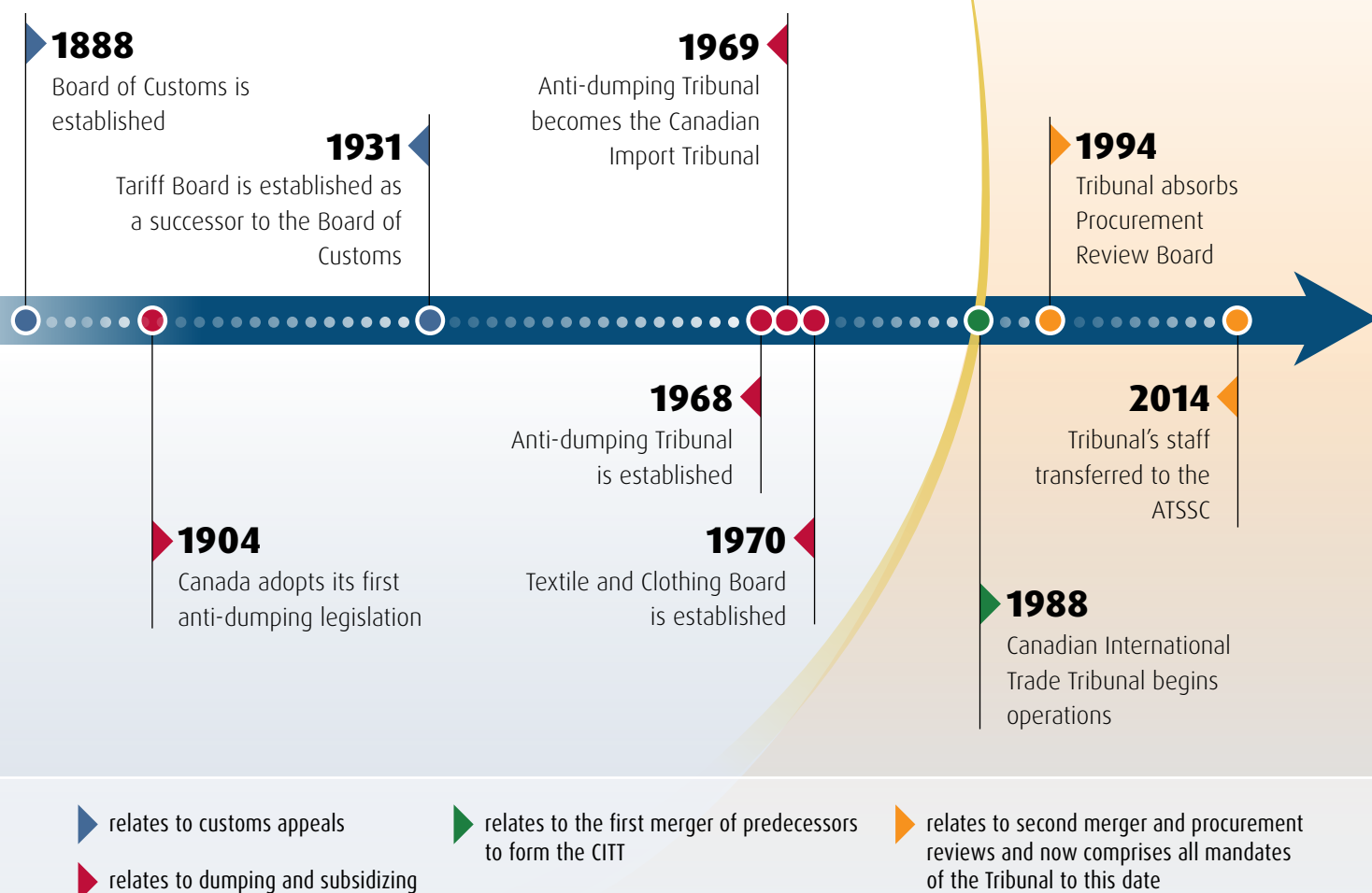
The Government of Canada, by way of the Governor in Council or the Minister of Finance, may direct the Tribunal to inquire into and provide advice on economic, trade, or tariff issues.











WHO WE ARE

History of the Tribunal

The Tribunal has a long and rich history¹.



¹ Tamra A. Alexander. *The Canadian International Trade Tribunal: Canada's Emerging Trade Jurisprudence*. Faculty of Law, McGill University, Montreal, 1996. The Tribunal thanks Professor Alexander, Algonquin College School of Business, for permitting the Tribunal to use her excellent historical summary.

1888 	The Board of Customs is established. Its powers include the review of matters such as the value for duty, the re-determination of a rate of duty, or the exemption of a good from duty. The decisions of the Board are subject to the approval of the Minister of Revenue.
1904 	Canada adopts its first anti-dumping legislation . It is among the first countries in the world to have such legislative tools. Under this legislation, duties are automatically applied to dumped goods, without case-by-case investigations.
1931 	The Tariff Board is established as a successor to the Board of Customs and Board of Customs appellate powers are transferred to the Tariff Board. It is a court of record, independent from Customs. In addition to the appeal powers held by the Board of Customs, the Tariff Board inquires into economic matters referred to it by the Minister of Finance.
1968 	The Anti-dumping Tribunal is established, following the adoption of the GATT Anti-Dumping Code. The application of anti-dumping duties is, from now on, subject to a determination by an independent tribunal of whether the dumping has caused material injury to domestic production.
1969 	The Anti-dumping Tribunal becomes the Canadian Import Tribunal to reflect a broader mandate to conduct injury inquiries in both anti-dumping and countervailing duty proceedings under the newly adopted <i>Anti-dumping Act</i> , as well as in safeguard cases.
1970 	The Textile and Clothing Board is formed and inquires into safeguard complaints by the Canadian textile and apparel industries.
1988 	The Canadian International Trade Tribunal (CITT) begins operations, following the merger of the Tariff Board, the Canadian Import Tribunal and the Textile and Clothing Board.
1994 	The Tribunal absorbs the Procurement Review Board , established in 1988, extending the Tribunal's mandate to include inquiries into whether federal procurement processes have been conducted in accordance with Canada's domestic and international trade obligations.
2014 	The Administrative Tribunals Support Service of Canada (ATSSC) is established to provide operational support and corporate services to a group of tribunals, including the CITT. Staff and resources associated with the CITT Secretariat are transferred to the new entity, while remaining mainly dedicated to the Tribunal.

Members of the Tribunal

The Tribunal may be composed of up to seven full-time permanent members, including the Chairperson and a Vice-Chairperson. In addition to his duties as a member of the Tribunal, 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 and can be renewed once. Up to five temporary members may also be appointed. [Members](#) have a variety of educational backgrounds and experience.

Mr. Frédéric Seppey is the Chairperson of the Tribunal. The Vice-Chairperson position has been vacant since June 2020. In 2021-22, the Tribunal operated with six permanent members and one temporary member.

As of March 31, 2022, the Tribunal's members are:

- **Ms. Susan Beaubien** (Permanent Member, mandate effective until March 3, 2024);
- **Ms. Cheryl Beckett** (Permanent Member, mandate effective until September 30, 2023);
- **Mr. Georges Bujold** (Permanent Member, mandate effective until September 30, 2023);
- **Mr. Peter Burn** (Permanent Member, mandate effective until January 29, 2023);
- **Mr. Serge Fréchette** (Temporary Member, mandate effective until April 12, 2022);
- **Mr. Randolph W. Heggart** (Permanent Member, mandate effective until June 17, 2024); and
- **Mr. Frédéric Seppey** (Chairperson, mandate effective until December 31, 2025).





WHAT WAS SPECIAL IN 2021-22?

COVID-19 and the Tribunal

In March 2020, when the COVID-19 pandemic was declared in Canada, Tribunal members and secretariat staff had to adapt very quickly to an unprecedented situation. They continued their dedicated work largely remotely over fiscal year 2021-22. Secretariat staff quickly adopted technology that ensured the seamless continuation of operations remotely, namely Microsoft Teams and WebEx. These tools became staples in the Tribunal's ability to continue to deliver services to Canadians. Many practices and procedures required adjustments, but the ongoing creativity and dedication of secretariat staff ensured the Tribunal succeeded in delivering on its mandates.

In 2021-22, in light of health and safety restrictions, all Tribunal hearings were conducted virtually.

E-filing and e-communications

The Tribunal's E-registry pilot project was expanded this year to allow for better integration with the Tribunal's case management system and to allow counsel to serve each other directly for limited disclosure and confidentiality checks. Secretariat staff held several training sessions to help stakeholders become more familiar with its electronic tools, particularly the E-registry.

In the context of the pandemic, the Tribunal accelerated its transition towards increased electronic communications. Previously, the Tribunal sent notices by mail to interested parties in trade remedy cases. Now, it notifies interested parties of its proceedings mainly by email—the plan is to expand this initiative in the coming year.

Outreach

The Tribunal's Advisory Committee is composed of legal counsel and representatives, business association representatives and governmental officials. Its mandate is to assist the Chairperson and members in maintaining and enhancing the Tribunal's global reputation of excellence by seeking recommendations related to its accessibility, transparency and fairness. It is co-chaired by the Chairperson of the Tribunal and a member of the Advisory Committee. Mr. Paul Conlin became co-chair of the Advisory Committee in November 2021, replacing Mr. Larry Herman who had ably acted as co-chair since 2016.

Members of the Tribunal met with the Advisory Committee three times during the fiscal year. Meetings were held in May, June and October and focused on how the Tribunal operates in a COVID-19 environment and on issues related to the conduct of virtual hearings. Discussions on ways to enhance confidentiality practices also took place. The Tribunal will continue working with the Advisory Committee to seek its stakeholders' input on these issues and its ongoing efforts to enhance fairness and accessibility for all parties, especially for small- and medium-sized businesses.

The Tribunal also renewed its linkages with its global counterparts this year, which had been curtailed somewhat by the restrictions that the COVID-19 pandemic imposed on global travel. The Tribunal and its secretariat participated in bilateral meetings with Australia's Anti-Dumping Commission and the United Kingdom's Trade Remedies Authority. The Tribunal also participated in a virtual session of the multilateral Seoul International Forum on Trade Remedies in November 2021. Within Canada, the Tribunal and its secretariat strengthened their working relationship with the Office of the Procurement Ombudsman and participated in an information workshop for legal students held by the Council of Federal Tribunal Chairs.



CASELOAD

The Tribunal's caseload over the last five years has seen a trend increase, namely for its procurement reviews and dumping and subsidizing injury inquiries and expiry reviews. The table below contains some key indicators in this regard.

Tribunal Caseload Overview

	Cases Received					Total Decisions/Reports Issued				
	2021-22	2020-21	2019-20	2018-19	2017-18	2021-22	2020-21	2019-20	2018-19	2017-18
TRADE REMEDIES										
Injury inquiries										
Preliminary (PI)	6	7	2	6	4	4	7	2	6	5
Final (NQ)	6	5	2	5	5	9	3	1	6	5
Public interest inquiries (PB)										
Requests	1	0	0	0	0	1	0	0	0	0
Inquiries	0	0	0	0	0	0	0	0	0	0
Interim reviews (RD)										
Requests	0	3	2	1	1	1	3	2	2	2
Reviews	0	0	0	0	0	1	1	0	2	1
Expiry reviews										
Expiries (LE)	7	5	5	9	5	6	5	6	8	6
Expiry reviews (RR)	6	5	6	8	6	4	6	8	6	2
Safeguards	1	2	2	1	0	1	1	3	0	0
Requests for importer ruling (MP)	1	0	0	0	0	0	0	0	0	0
Remanded cases ²	0	2	1	0	1	0	1	0	0	1
TOTAL	28	29	20	30	22	27	27	22	30	22

² Remanded cases here cover all types of proceedings under the *Special Import Measures Act*.

Tribunal Caseload Overview

	Cases Received					Total Decisions/Reports Issued				
	2021-22	2020-21	2019-20	2018-19	2017-18	2021-22	2020-21	2019-20	2018-19	2017-18
PROCUREMENT (PR)										
Complaints received	89	102	72	69	67	94	81	63	64	58
Remanded cases	0	0	0	0	1	2	0	0	0	1
TOTAL³	89	102	72	69	68	96	81	63	64	59
APPEALS										
Appeals										
<i>Customs Act (AP)</i>	44	32	47	69	65	13	12	40	20	28
<i>Excise Tax Act (AP)</i>	0	0	0	0	2	0	0	0	0	0
<i>Special Import Measures Act (EA)</i>	6	1	10	1	1	4	1	0	0	0
Remanded cases	0	1	0	2	0	1	0	1	1	0
Extensions of time (EP)										
<i>Customs Act (AP)</i>	2	1	2	4	1	1	1	3	3	2
<i>Excise Tax Act (AP)</i>	0	0	0	0	0	0	0	0	0	0
TOTAL	52	35	59	76	69	19	14	44	24	30

³ The totals correspond to the number of complaints received and the number of decisions issued for complaints accepted (or not) for inquiry, as well as decisions on merit, in a given year.

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND EXPIRY REVIEWS

Under the *Special Import Measures Act* (SIMA), the Canada Border Services Agency (CBSA) may impose [anti-dumping](#) and [countervailing](#) duties if Canadian producers are injured by imports of goods into Canada:

- that 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 CBSA makes the determination as to whether dumping and subsidizing has occurred. The Tribunal determines whether such dumping or subsidizing has caused, or is threatening to cause, injury to a domestic industry or has caused delay to the establishment of a domestic industry.



Injury inquiries

Preliminary injury inquiries (PI)

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 SIMA.

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.

If there's 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 a determination and reasons.

The Tribunal completed four preliminary injury inquiries in the fiscal year concerning small power transformers, container chassis and oil country tubular goods (two inquiries).

Preliminary injury inquiries initiated in 2021-22

	PI-2021-001	PI-2021-002	PI-2021-003	PI-2021-004	PI-2021-005	PI-2021-006
Product	Certain Small Power Transformers	Certain Container Chassis	Oil Country Tubular Goods	Oil Country Tubular Goods	Mattresses	Drill Pipe
Type of case	Dumping	Dumping and subsidizing	Dumping	Dumping	Dumping and subsidizing	Dumping and subsidizing
Country	Austria, Chinese Taipei and South Korea	China	Mexico	Austria	China	China
Date of decision	June 14, 2021	August 9, 2021	August 30, 2021	September 7, 2021	In progress	In progress
Determination	Reasonable indication of injury or threat of injury	Reasonable indication of injury	Reasonable indication of injury	Reasonable indication of injury		
Participants	8	7	5	6		

Final injury inquiries (NQ)

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

The Tribunal must issue its [finding](#) within 120 days from the date of the CBSA's preliminary determination of dumping or subsidizing. The Tribunal has an additional 15 days to issue reasons supporting its finding. A Tribunal finding of injury or retardation or threat of injury to a

domestic industry is required for the imposition of anti-dumping or countervailing duties by the CBSA. The finding remains in place for up to five years.

The Tribunal completed nine final injury inquiries in the fiscal year concerning wheat gluten, grinding media, upholstered domestic seating, small power transformers, container chassis, concrete reinforcing bar (two inquiries), and oil country tubular goods (two inquiries).

Final injury inquiries completed in 2021-22⁴

	NQ-2020-003	NQ-2020-004	NQ-2020-005	NQ-2021-001	NQ-2021-002	NQ-2021-003	NQ-2021-004	NQ-2021-005	NQ-2021-006
Product	Wheat Gluten	Concrete Reinforcing Bar	Concrete Reinforcing Bar	Certain Grinding Media	Certain Upholstered Domestic Seating	Certain Small Power Transformers	Oil Country Tubular Goods	Certain Container Chassis	Oil Country Tubular Goods
Type of case	Dumping	Dumping	Dumping	Dumping and subsidizing	Dumping and subsidizing	Dumping	Dumping	Dumping and subsidizing	Dumping
Country	Australia, Austria, Belgium, France, Germany and Lithuania	Algeria, Egypt, Indonesia, Italy, Malaysia, Singapore and Vietnam	Oman and Russia	India	China and Vietnam	Austria, Chinese Taipei and South Korea	Mexico	China	Austria
Date of finding	April 22, 2021	June 4, 2021	July 2, 2021	August 27, 2021	September 2, 2021	December 24, 2021	January 26, 2022	February 18, 2022	February 22, 2022
Finding	Injury	Injury	Threat to cause injury	Injury	Injury	Injury: Chinese Taipei and South Korea			
Questionnaires received	35	48	41	33	121	36	36	48	36
Participants	5	11	8	6	37	10	6	5	7

⁴ All final injury inquiries initiated in 2021-22 were completed by year-end.

Historical trend: injury inquiries

The Tribunal is experiencing a trend increase in SIMA-related activity and expects this trend to continue, in part in reaction to a challenging global trade environment and in part due to a high percentage of inquiries and reviews that result in the imposition of trade remedy measures.

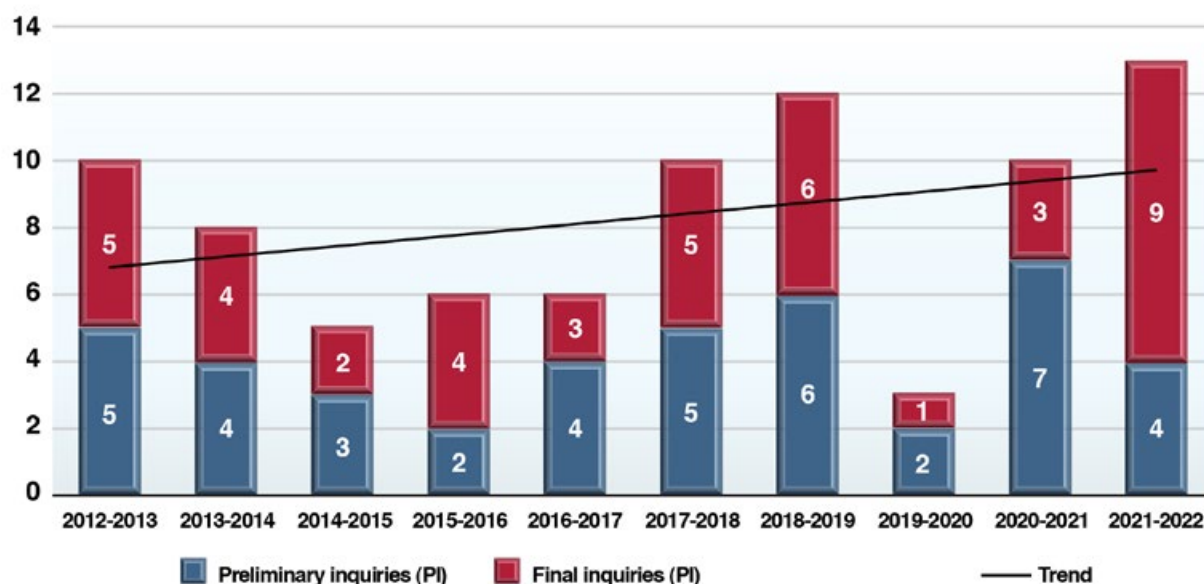
Historical data shows an increase in the number of cases coming before the Tribunal. Particularly noticeable is the increase in the number of preliminary injury and injury investigations conducted this year and over the last ten years, as indicated in the graph below.

In Budget 2021, the Government signalled its intention to launch [public consultations on measures to strengthen Canada's trade remedy system](#) and to improve access to the trade remedy system for workers, unions and small and medium-sized enterprises (SMEs). Budget 2022 announced the Government's intention to [introduce changes to SIMA and to the *Canadian International Trade Tribunal Act*](#) to better ensure that unfairly traded goods are subject to duties and increase the participation of workers.

These changes, if implemented, may make it easier to bring forward trade remedies cases and further encourage the use of Canada's trade remedies mechanisms—potentially leading to a rise in the average number of cases filed with the Tribunal each year.



Number of injury inquiries – 2012-2022



Expiry reviews

Initiation of expiry reviews (LE)

SIMA provides that a finding or [order](#) expires after five years unless an expiry review has been initiated. No later than two months before the expiry date of the finding or order, the Tribunal publishes a notice of expiry. The notice invites interested persons to submit their views on whether the order or finding should be reviewed. 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.

The Tribunal completed six initiations of expiry reviews during the fiscal year concerning flat hot-rolled carbon and alloy steel sheet and strip, welded large diameter carbon and alloy steel line pipe, copper pipe fittings, gypsum board, pup joints and concrete reinforcing bar.

Expiries initiated in 2021-22

	LE-2021-001	LE-2021-002	LE-2021-003	LE-2021-004	LE-2021-005	LE-2021-006	LE-2021-007
Product	Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip	Welded Large Diameter Carbon and Alloy Steel Line Pipe	Copper Pipe Fittings	Gypsum Board	Pup Joints	Concrete Reinforcing Bar	Certain Fabricated Industrial Steel Components
Type of case	Dumping / subsidizing	Dumping / subsidizing	Dumping / subsidizing	Dumping	Dumping and subsidizing	Dumping	Dumping / subsidizing
Country	Dumping: Brazil, China and Ukraine Subsidizing: India	Dumping: China and Japan Subsidizing: China	Dumping: United States, South Korea and China Subsidizing: China	United States	China	Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain	Dumping: China, South Korea and Spain Subsidizing: China
Date of decision	July 9, 2021	September 27, 2021	November 8, 2021	December 13, 2021	February 24, 2022	March 29, 2022	Pending
Decision	Expiry review initiated	Expiry review initiated	Expiry review initiated	Expiry review initiated	Expiry review initiated	Expiry review initiated	In progress
Participants	7	7	5	7	1	8	

Expiry reviews (RR)

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 purpose of an expiry review is to determine whether the imposition of anti-dumping or countervailing duties remains 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 the goods in its subsequent determination of the likelihood of injury, and it issues an order rescinding the order or finding with respect to them.

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

The Tribunal completed four expiry reviews in the fiscal year concerning whole potatoes, refined sugar, carbon and alloy steel line pipe, and steel grating.

Expiry reviews completed in 2021-22

	RR-2020-002	RR-2020-003	RR-2020-004	RR-2020-005
Product	Certain Whole Potatoes	Refined Sugar	Carbon and Alloy Steel Line Pipe	Steel Grating
Type of case	Dumping	Dumping / subsidizing	Dumping and subsidizing	Dumping and subsidizing
Country	United States	Dumping: United States, Denmark, Germany, Netherlands and United Kingdom	Dumping: United States, South Korea and China Subsidizing: China	United States
Date of decision	June 2, 2021	August 6, 2022	January 6, 2022	February 2, 2022
Decision	Order continued	Orders continued	Finding continued	Order continued
Questionnaires received	40	19	28	31
Participants	20	6	5	1

Expiry reviews started in 2021-22

	RR-2021-001	RR-2021-002	RR-2021-003	RR-2021-004	RR-2021-005	RR-2021-006
Product	Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip	Welded Large Diameter Carbon and Alloy Steel Line Pipe	Copper Pipe Fittings	Gypsum board	Pup Joints	Concrete Reinforcing Bar
Type of case	Dumping / subsidizing	Dumping / subsidizing	Dumping / subsidizing	Dumping	Dumping and subsidizing	Dumping
Country	Dumping: Brazil, China and Ukraine Subsidizing: India	Dumping: China and Japan Subsidizing: China	Dumping: United States, South Korea and China Subsidizing: China	United States	China	Belarus, Chinese Taipei, Hong Kong, Japan, Portugal and Spain
Date of decision	In progress	In progress	In progress	In progress	In progress	In progress

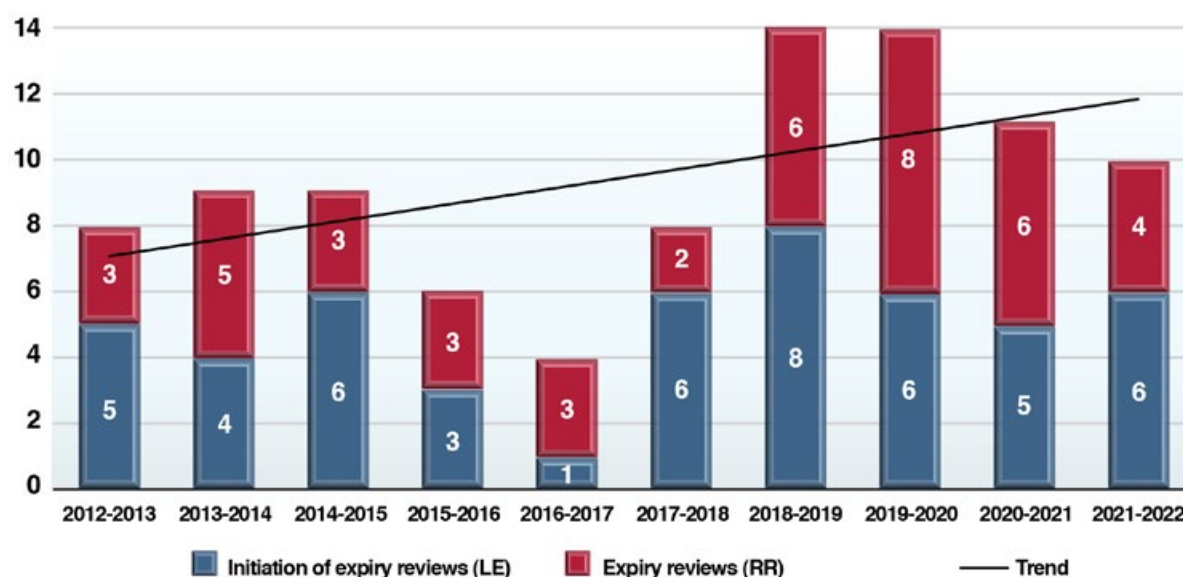
Historical trend: expiry reviews

Anti-dumping and countervailing findings expire after five years unless an expiry review is initiated to determine whether the measures remain necessary. The number of annual expiry reviews has gradually increased over a ten-year period, from an average of 3 expiry reviews for the 2012-17 period to 5 for the 2017-22 period. Most inquiries and expiry reviews in recent years have led to the imposition or continuation of measures. As shown in the graph on the next page, this creates a cyclical but gradual upward trend pressure on the caseload of the Tribunal. For example, there are now 49 injury findings in force⁵ as of March 31, 2022, all of which will come up for review within the next five years.

⁵ A finding may concern more than one country and as such may include more than one anti-dumping or countervailing measure.



Number of expiry reviews – 2012-2022



Public interest inquiries (PB)

At the request of an interested person or on its own initiative, the Tribunal may initiate a public interest inquiry following an injury finding if the Tribunal 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. In cases where it concludes that such duties are not in the public interest, the Tribunal will issue a report to the Minister of Finance recommending that the duties be reduced and by how much.

The Tribunal received one request for a public interest inquiry during the fiscal year concerning concrete reinforcing bar. It did not proceed to the inquiry stage, as the request was not properly documented.

Interim reviews (RD)

The Tribunal may conduct an early review of 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. This is an interim review. An interim review may be warranted where there is a reasonable indication that new facts have arisen or if the circumstances that led to the finding or order have changed. Where the Tribunal commences an interim review, it determines if the finding or order (or any aspect of it) should be rescinded or continued to its expiry date, with or without amendment.

The Tribunal conducted two interim reviews in 2021-22. For the interim review concerning welded large diameter carbon and alloy steel line pipe, the Tribunal granted a product exclusion and amended its finding accordingly. For the refined sugar interim review, the Tribunal was not convinced that an interim review was warranted and therefore did not conduct one.

Interim reviews completed in 2021-22

	Request for Interim Review RD-2020-002	Interim Review RD-2020-003
Product	Refined Sugar	Welded Large Diameter Carbon and Alloy Steel Line Pipe
Type of case	Dumping / subsidizing	Product exclusion
Country	Dumping: United States, Denmark, Germany, Netherlands and United Kingdom Subsidizing: European Union	China and Japan
Date of decision	April 27, 2021	April 16, 2021
Decision	No interim review	Finding amended

Requests for importer ruling (MP)

Where a question arises as to which of two or more persons is the importer in Canada of goods imported or to be imported into Canada and on which SIMA duties are payable, or has been paid or will be payable if the goods are imported, the President of the CBSA may request that the Tribunal issue a ruling on that question. Any person interested in the importation of the goods may also make such a request.

Requests for importer rulings are rare; the last such Tribunal proceeding was in 2003-04. This year, following a request from the CBSA, the Tribunal initiated one such proceeding for certain oil country tubular goods. At year-end, it was still ongoing.



Sample of noteworthy decisions under the dumping and subsidizing injury inquiries and expiry reviews mandate

Upholstered Domestic Seating **(NQ-2021-002)**

On September 2, 2021, the Tribunal issued its finding in NQ-2021-002 concerning the dumping and subsidizing of certain upholstered domestic seating (UDS; these include but are not limited to seating such as sofas, chairs, loveseats, sofa-beds, day-beds, futons, ottomans, stools and home-theatre seating) from China and Vietnam. The complainant in this inquiry, Palliser Furniture Ltd., was a domestic producer of these seats, supported by a group of UDS domestic producers. The Tribunal found that the dumping and subsidizing of most of the goods covered by the inquiry had caused injury to the domestic industry.

This inquiry was notable in that it involved consumer goods where a finding would have direct implications on consumers. For instance, where UDS was deemed to be dumped, the amount of anti-dumping duties applied to Chinese imports could be as high at 188.0 percent and applied to Vietnamese imports could be as high as 179.5 percent. Further, for those goods that were found to be subsidized, countervailing duties could add up to 81.1 percent on the prices of Chinese goods and 5.5 percent on the prices of Vietnamese goods. As the Chinese and Vietnamese UDS represented over half of the Canadian market in 2020, the increase in overall UDS pricing due to anti-dumping and countervailing duties was noticeable to Canadian consumers. This was especially apparent during the investigation itself given that preliminary duties were applied to the Chinese and Vietnamese UDS at the initiation of the inquiry.

From an investigation perspective, this inquiry was remarkable for a number of reasons. Firstly, there was a lack of homogeneity within the range of UDS applicable to the definition of the goods being investigated. This diverse range of UDS added a complexity to the Tribunal's consideration of whether imported UDS was comparable to and competed with

UDS produced in Canada. Secondly, unlike most other Tribunal investigations, this investigation involved a domestic industry that consisted of a significant number of producers, not all of which were known to the complainant when it filed its complaint. Lastly, the inquiry was especially complex and involved many parties, submissions and a volume of requests for exemptions that had not been experienced by the Tribunal in over a decade.

Small Power Transformers **(NQ-2021-003)**

On December 24, 2021, the Tribunal issued its findings in NQ-2021-003 concerning the dumping of small power transformers having a top power handling capacity between 3 and 60 megavolt amperes, from Austria, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), and South Korea. Three major Canadian manufacturers of those transformers were the complainants in this inquiry. The Tribunal found that the dumping of transformers from Chinese Taipei and South Korea had caused material injury to the domestic industry but that the dumping of transformers from Austria had not caused injury and was not threatening to cause injury.



When an inquiry involves goods from multiple sources, the Tribunal must consider whether an assessment of the cumulative effect of the dumping of goods is appropriate. This case required a detailed analysis of the conditions of competition in the industry, which led the Tribunal to conclude that a cumulative assessment of the effect of the dumping of transformers from South Korea and Chinese Taipei was appropriate but that it was not appropriate to cumulate the effects of imports of transformers from Austria, as these did not serve the same market segments. Accordingly, the Tribunal conducted two separate injury and threat of injury analyses.

The Tribunal found that imported transformers from Chinese Taipei and South Korea significantly impacted the prices of domestic goods and caused domestic producers to lose sales. This forced domestic producers to bid aggressively to maintain sales volumes and caused material injury in the form of lost profitability and reduced plant backlogs, with downstream impacts on profitability, investments and overall growth. In contrast, the Tribunal found that transformers from Austria were imported as a result of procurements where domestic producers either did not bid or did not meet technical requirements. They were also priced higher than domestic like goods, and there were no observable price effects resulting from these imports. The Tribunal therefore concluded that the dumping of transformers from Austria had not contributed to the injury suffered by the domestic industry over the period of inquiry and that they did not present a threat of future injury.

Oil Country Tubular Goods III **(NQ-2021-004)**

On January 26, 2022, the Tribunal issued its decision in NQ-2021-004 concerning the dumping of oil country tubular goods (OCTG) from Mexico. This inquiry stemmed from a complaint filed with the CBSA on May 10, 2021, by Evraz Inc. NA Canada and Welded Tube of Canada Corp., two producers of OCTG in Canada. The Tribunal found that the dumping had not caused injury and was not threatening to cause injury to the domestic industry.

The case presented an unusual situation where a third domestic producer of OCTG, Tenaris Canada, was the nearly sole importer of the OCTG from Mexico as part of a global group of related companies producing OCTG in Mexico and in other countries. The Tribunal also examined the impact of Tenaris Canada's internal transactions, pricing policies and marketing strategy for both domestically produced OCTG and its imports from Mexico and how these should be considered in the context of the Tribunal's injury analysis.

The Tribunal found that Tenaris Canada had imported all, or nearly all, of the OCTG from Mexico over the period of inquiry and that these imports formed part of a calculated commercial strategy. Because Tenaris Canada had substantially benefited from the sale of these goods and was therefore insulated from any potential adverse effects arising from those sales, the Tribunal found it appropriate, for the purposes of its injury analysis, to exclude Tenaris Canada from the domestic industry, thereby ensuring that the aggregate data relating to the state of the domestic industry were not distorted.

The Tribunal, however, found no evidence that Tenaris Canada used its corporate structure to leverage the dumped imports in such a way that any injury resulting from Tenaris Canada's sales of low-priced domestically produced OCTG was attributable to its imports from Mexico. Ultimately, the Tribunal found that the complainants had not been materially injured by the dumping of Mexican OCTG but rather by the impact of a number of other factors, including the existence of a major industry downturn, the COVID-19 pandemic, the destocking of inventories by independent distributors resulting in a lower level of sales by the complainants, and Tenaris Canada's aggressive pricing of domestically produced like goods.





PROCUREMENT REVIEWS

The Tribunal is responsible for safeguarding the integrity of the Government of Canada's procurement processes.

The Tribunal:

- inquires into complaints by [potential suppliers](#) of goods or services to the federal government relating to [designated contracts](#) valued above prescribed monetary thresholds;
- determines whether procurement processes under complaint complied with Canada's obligations under certain trade agreements;
- considers issues such as whether bids were evaluated fairly;
- recommends remedies and award costs; and
- provides recommendations to federal government institutions about their procurement processes.

There are potentially up to **three** stages in the consideration by the Tribunal of any procurement complaint:

1) Acceptance stage – Within five working days of receipt of a properly documented complaint, the Tribunal determines whether the complaint is filed within statutory deadlines, whether it concerns a procurement process subject to the Tribunal's jurisdiction, and whether the complaint discloses a reasonable indication of breach of compliance with the trade agreements. If those conditions are met, the Tribunal begins an inquiry.

2) Inquiry stage – Inquiries are completed within 45, 90, or 135 days, depending on the complexity of a matter. The Tribunal examines the complainant's allegations, the submissions of the government institution involved in the matter, and in certain cases submissions by interested parties who have joined the proceedings as intervenors. Typically, submissions are made in writing, but oral hearings are convened in certain instances. If a complaint is valid, the Tribunal will recommend an appropriate remedy, as such

as that new solicitation be issued, that bids be re-evaluated, that the contract be terminated, that it be awarded to the complainant or that the complainant be compensated by an amount specified by the Tribunal.

3) Compensation stage – If a complaint is valid and the Tribunal recommends compensation (i.e. a monetary award), the Tribunal typically asks parties to negotiate a mutually agreed amount of compensation. If parties cannot agree on an amount, the Tribunal will receive submissions and decide on an appropriate amount of monetary compensation.

Overview of the procurement complaint process

1. A potential supplier is informed by the government institution that they are not the successful bidder.

2. The potential supplier has **10 working days** to file a complaint with the Tribunal.

3. ACCEPTANCE STAGE

The Tribunal reviews the complaint to determine whether it can be accepted for inquiry. The potential supplier (now complainant) is notified within one week if the complaint is accepted for inquiry.

5. In most cases, within **90 calendar days from its receipt**, the Tribunal determines whether the complaint is valid, valid in part or not valid.

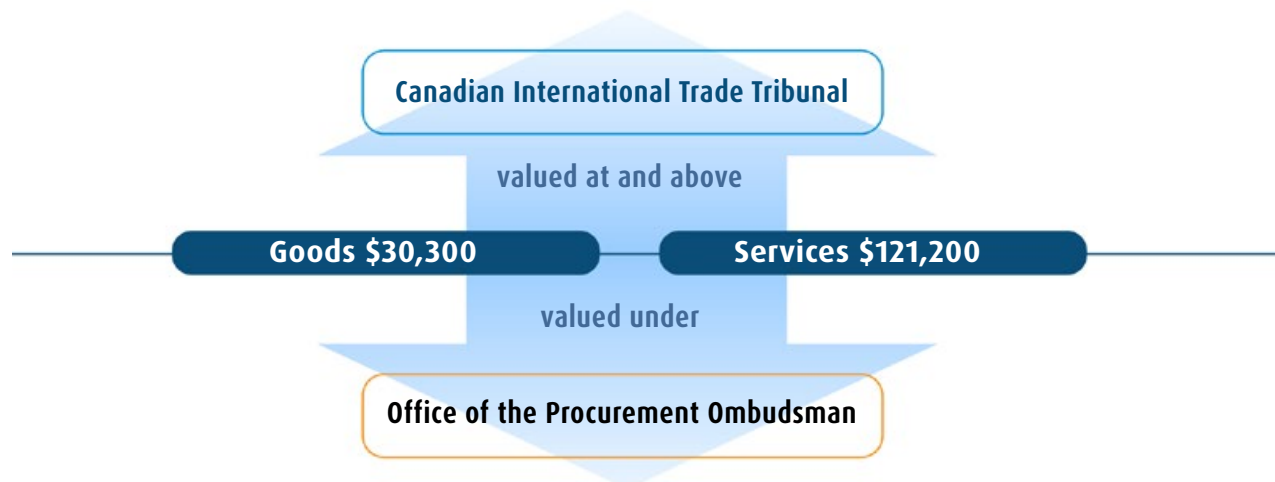
4. INQUIRY STAGE

If the complaint is accepted for inquiry, in one month the complainant receives a copy of the Government Institution Report, which is the government institution's response to the complaint. The complainant has **7 working days** to provide comments on the report.

If the complainant disagrees with the Tribunal's findings, they can ask the Federal Court of Appeal to review the matter.

Relationship between the Tribunal and the Office of the Procurement Ombudsman

Since October 1, 2020, the Office of the Procurement Ombudsman (OPO) and the Tribunal have implemented a Memorandum of Understanding (MOU). The MOU aims at facilitating suppliers' access to the complaint review mechanisms administered by both organizations. It also provides for continued cooperation between OPO and the Tribunal. The Tribunal and OPO have concurrent jurisdiction over procurement complaints brought by *Canadian suppliers* as follows:



The Tribunal has exclusive jurisdiction over complaints by *foreign suppliers* about designated federal government procurement processes under applicable trade agreements. When filing a complaint with either OPO or the Tribunal, complainants are given the option to share their contact information and the basic nature of their complaint with the other organization. This exchange mechanism enhances access to justice by ensuring that complainants are filing their grievances in the right place and, most importantly, in the timeliest manner possible. During this fiscal year, 54 complainants were assisted in this manner.

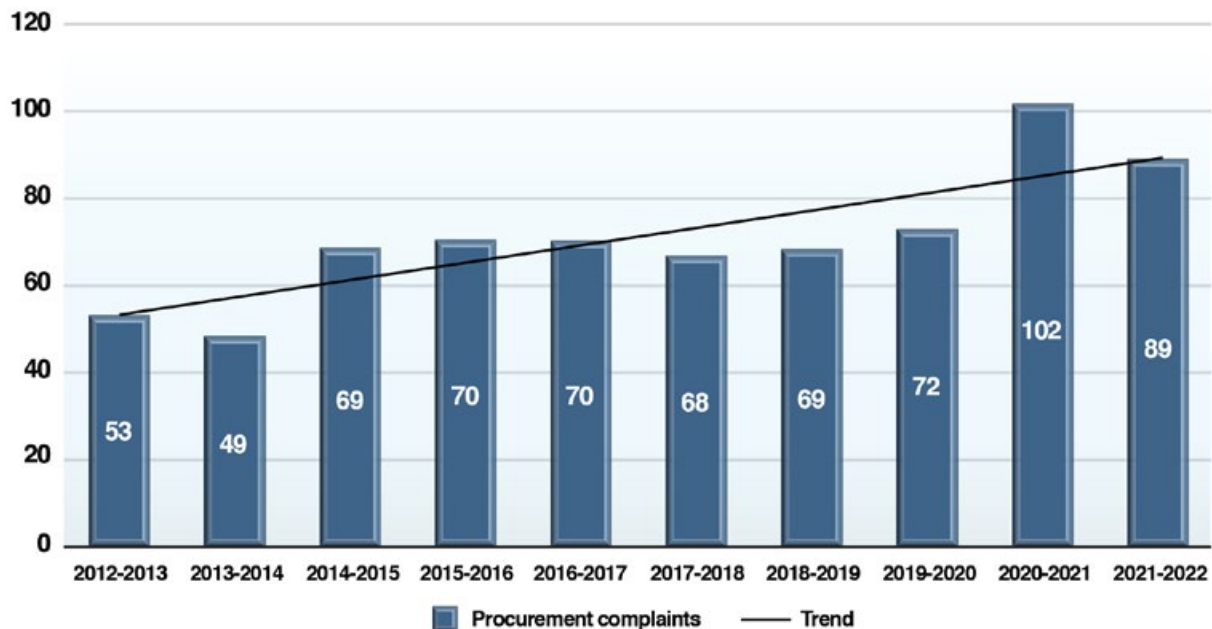
Officials from OPO and the Tribunal and its secretariat meet regularly to monitor implementation of the MOU.



Historical trend: procurement complaints received

The Tribunal's caseload for its procurement review mandate remains high. As indicated in the following table, the number of complaints received by the Tribunal in 2021-22 was 36 percent higher than in 2012-13, with the average number of complaints received during a five-year period having increased from 62 during the 2012-17 period to 79 during the 2017-22 period. This represents an increase of 27.4 percent between periods.

Procurement complaints received – 2012-2022



Procurement review activities in 2021-22

Number of procurement cases (acceptance and inquiry stages) during fiscal year	
Carried over from previous fiscal year	21
Received during this fiscal year	89
Total	110
Disposed during this fiscal year	101
Remaining outstanding at the end of fiscal year	9

A) Complaints not accepted for inquiry ⁶	
Total decisions issued	55
Of which:	
Lack of jurisdiction/not a potential supplier	3
Late filing	7
Not a designated contract/no reasonable indication of a breach/premature	45
Withdrawn/abandoned	5
Still ongoing at the end of fiscal year	4

B) Complaints accepted for inquiry	
Total decisions issued	41
Of which:	
Dismissed/Ceased	13
Not valid (includes two remanded complaints)	20
Valid or valid in part	8
Still ongoing at the end of fiscal year	5

Compensation

Two compensation orders were issued during this fiscal year: *Marine International Dragage (M.I.D.) Inc. v. Department of Public Works and Government Services* (PR-2020-023) and *Inventa Sales & Promotions v. Department of Public Works and Government Services* (PR-2021-009).

Number of procurement cases (compensation stage) during fiscal year	
Carried over from previous fiscal year	3
Initiated during this fiscal year	2
Total	5
Disposed during this fiscal year	2
Remaining ongoing at the end of fiscal year	3

⁶ Complaints that are not accepted for inquiry fall into four categories: they are filed by complainants who are not potential suppliers; they concern procurements that are not covered by the trade agreements; they are filed beyond the statutory timeframe set in legislation; or they have failed to demonstrate a reasonable indication of a breach of the trade agreements.

Sample of noteworthy decisions under the procurement review mandate

The cases highlighted this year concern systemic challenges faced by suppliers. They relate to governance and procedural issues, namely:

- transparency of the procurement processes;
- bid delivery;
- set-aside procurement strategies for Indigenous suppliers; and
- national security exceptions.

Bronson Consulting Group Inc. **(PR-2020-071)**

This complaint concerned a Request for Abbreviated Proposals issued by Defence Construction Canada (DCC) on behalf of the Department of National Defence for historical records research and document management production services. Bronson Consulting Group Inc. (Bronson) alleged that DCC inappropriately deducted points in its technical evaluation. Bronson sought to have the awarded contract cancelled, its proposal re-evaluated, and the contract awarded to the highest scoring proponent. The Tribunal found that the grounds of complaint raised by Bronson were not valid and that DCC's overall technical evaluation was reasonable.

In these proceedings, DCC refused to disclose certain information that should normally have been disclosed under the *Canadian International Trade Tribunal Rules*. DCC took the position that section 30 of the *Defence Production Act* (DPA) prevented it from disclosing such information. DCC had previously participated in several other proceedings at the Tribunal without having raised similar opposition. The Tribunal did not order DCC to disclose the information. However, the Tribunal ruled that it would have drawn negative inferences from such a refusal to disclose if the information in question had been necessary to resolve the complaint. The Tribunal also contemplated that an improper refusal to disclose information could constitute a breach of the trade agreements. The Tribunal warned that section 30 of

the DPA should not become a vehicle for DCC to avoid its disclosure obligations in procurement complaints to which it is a party.

Aqua Valley Water **(PR-2020-098)**

This complaint concerned a notice of proposed procurement issued by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence for the supply of bottled water. Aqua Valley Water (Aqua Valley) was the incumbent on the previous contract, which had been extended several times. Aqua Valley was expecting a new solicitation to be issued but was asked to extend its deliveries on the basis that a new solicitation had been delayed because of the COVID-19 pandemic.

A new solicitation was issued, but Aqua Valley did not notice it, and the bid closing deadline passed



unknown to it. It then learned that a new contract had been awarded to a competitor. Aqua Valley alleged that PWGSC had misled it into believing that a new solicitation would be suspended until the COVID-19 pandemic was over. The Tribunal held that the complaint was valid.

The Tribunal found that PWGSC's actions or inactions effectively deprived Aqua Valley of being able to submit a bid. The Tribunal found that the procurement process for the new solicitation was proceeding concurrently with the ongoing performance and management of the prior contract, and that there was a lack of openness and transparency by PWGSC. The Tribunal paralleled the duty of honest performance described in the Supreme Court of Canada's decision in *C.M. Callow Inc. v. Zollinger* with trade agreement requirements pertaining to the conduct of fair, open and transparent procurement processes. The Tribunal noted that heightened sensitivity to communications was never more important than during the unique circumstances created by the pandemic.

Rampart International Corporation (PR-2021-023 and PR-2021-028)

These complaints concerned a request for proposal (RFP) issued by PWGSC on behalf of the Department of National Defence for a replacement pistol and holster system for the Canadian Armed Forces. The prime allegation in this matter was that some of the RFP's technical specifications and requirements breached the provisions of the Canadian Free Trade Agreement (CFTA), as they favoured a specific pistol design produced by only two manufacturers, namely SIG Sauer and Beretta. As such, it was alleged that the RFP's mandatory criteria unreasonably excluded some pistols, including the Glock pistols that Rampart International Corporation intended to bid. The Tribunal held that the complaints were valid and recommended the cancellation and the re-issuance of the solicitation.

The Tribunal found that the method by which the specifications were established was contrary to the requirement of Article 500 of the CFTA to "to establish a transparent and efficient framework to ensure fair and open access to government procurement opportunities for all Canadian suppliers." The Tribunal found that PWGSC breached Article 509(3) by not allowing bidders to propose equivalents to specifications that required a particular design or type. Failure to do so in this instance was fatal to the integrity of this procurement process. The Tribunal encouraged PWGSC to use performance or functional requirements when retendering because they are more easily relatable to legitimate operational requirements.

Asokan Business Interiors (PR-2021-045)

This complaint concerned a request for bid (RFB) issued by the Department of Finance for the provision of office chairs. Asokan Business Interiors alleged that the Department of Finance improperly declared its bid non-compliant with a mandatory criterion of the RFB. The Tribunal ceased its inquiry into the complaint because the complaint was subsequently withdrawn and because the RFB was subject to a trade agreement set-aside for Aboriginal businesses. A trade agreement set aside for Aboriginal businesses deprives the Tribunal from any power to inquire into a complaint concerning procurements under initiatives such as the Procurement Strategy for Aboriginal Business.

The Tribunal expressed concerns in its determination regarding the fact that Indigenous suppliers currently have fewer rights of access to justice than non-Indigenous Canadians and even certain foreign suppliers. Indeed, Indigenous persons and businesses who participate in government procurement opportunities currently do not have access to the Tribunal's bid challenge mechanism and can only turn to courts to seek formal redress whenever an Aboriginal set-aside is invoked.

University of Guelph, Laboratory Services Division (PR-2021-047) and Thales Canada Inc. (PR-2021-067)

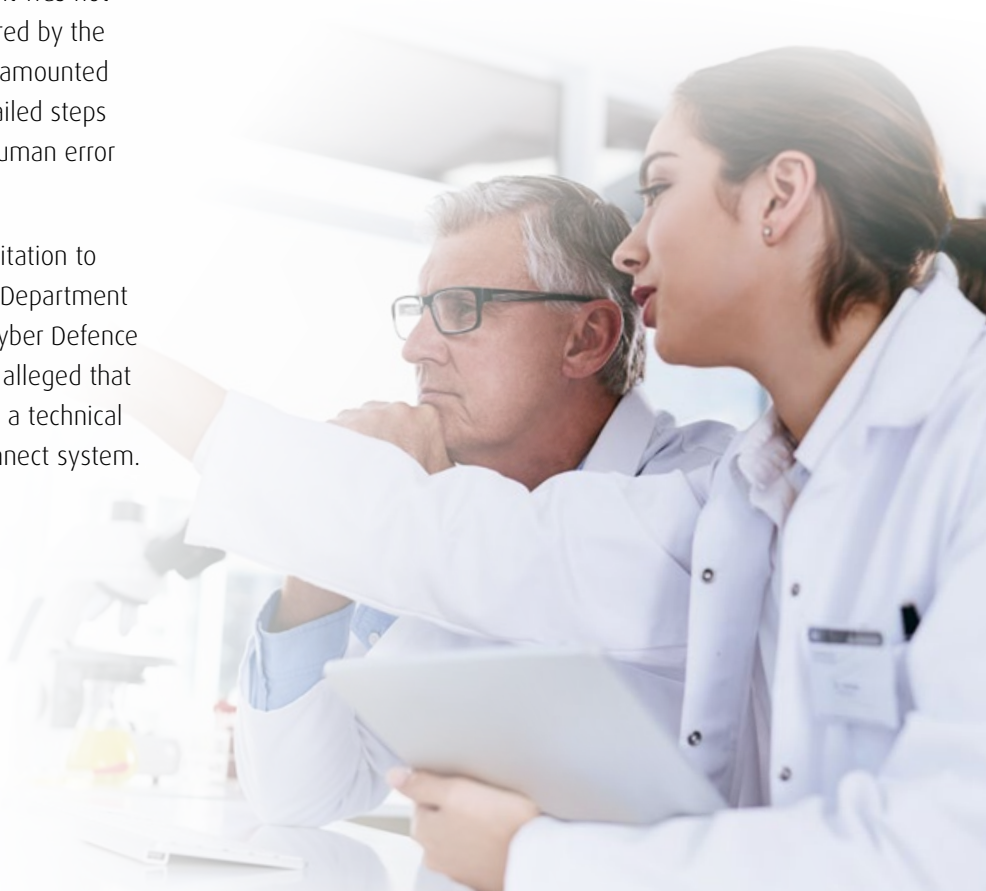
The noteworthy character of these two complaints stems from the fact that each complainant faced a very similar substantive issue (namely challenges in the use of the Canada Post's epost Connect system) in their respective procurement processes but ended up having very different access to the recourse mechanism provided by the Tribunal. In short, the University of Guelph, Laboratory Services Division (University of Guelph) was able to have its complaint investigated, whereas Thales Canada Inc. (Thales) was not.

The complaint by the University of Guelph concerned an RFP issued by PWGSC on behalf of the Canadian Food Inspection Agency for the provision of laboratory services. The University of Guelph experienced difficulties with epost Connect when it attempted to deliver its bid.

The Tribunal determined that the complaint was not valid. It noted that the situation encountered by the University of Guelph was unfortunate but amounted to a lack of diligence in following the detailed steps required to properly use epost Connect; human error was the cause.

The complaint by Thales concerned an invitation to qualify issued by PWGSC on behalf of the Department of National Defence for a project called "Cyber Defence – Decision Analysis and Response". Thales alleged that it was unable to submit its bid because of a technical problem with the Canada Post's epost Connect system.

The Tribunal could not inquire into this matter because a national security exception (NSE) had been properly invoked. Since amendments to the *Canadian International Trade Tribunal Procurement Inquiry Regulations* were adopted in 2019, the Tribunal must cease any inquiry as soon as it is shown that a NSE has been properly invoked by the procuring department. The Tribunal therefore ceased its inquiry of Thales's complaint. In its order ceasing the inquiry, the Tribunal noted that the 2019 amendments had the effect of subtracting from the Tribunal's scrutiny a matter dealing with issues that were unrelated to national security such as, in this instance, the operation of the Canada Post's epost Connect system. The Tribunal nonetheless encouraged PWGSC to examine the allegations made by Thales in respect of the epost Connect system and to take any appropriate action.



CUSTOMS AND EXCISE APPEALS

The Tribunal hears and decides on a range of appeals of decisions of the President of the Canada Border Services Agency (CBSA) and the Minister of National Revenue.

1) Appeals filed under the *Customs Act*

Appeals filed under the *Customs Act* relate to a range of issues, the most common of which include the:

- appropriate classification of imports according to the Canadian *Customs Tariff*;
- appropriate manner in which to calculate the value for duty imposed on imports;
- determination of where imports originated before they entered Canada; and
- importation of prohibited goods (such as weapons).

2) Appeals filed under the *Special Import Measures Act*

Appeals filed under the *Special Import Measures Act* (SIMA) relate to two key issues:

- whether the CBSA should have applied anti-dumping and/or countervailing duties to certain imports; and
- whether the CBSA properly calculated the margin of dumping or amount of subsidy for certain imports.

3) Appeals filed under the *Excise Tax Act*

Appeals filed under the *Excise Tax Act* relate to an assessment or a determination of excise tax. Excise taxes are levied on certain petroleum products, heavy automobiles and air conditioners designed for automobiles. There were no appeals filed under this mandate in 2021-22.

4) Extensions of Time

Under 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 or when 90 days have elapsed after the application was made and the person has not been notified of the CBSA's decision. A person may also apply to the Tribunal for an extension of time within which to file a notice of appeal.

Under 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 or file a notice of appeal with the Tribunal. During the fiscal year, the Tribunal issued only one order granting an extension of time, under the *Customs Act*.





Appeals Received, Heard and Scheduled

To ensure timely access to justice, the Tribunal schedules hearings immediately upon receipt of an appeal.

During the fiscal year, the Tribunal received 50 appeals. Seventy-four appeal cases were outstanding at the end of the fiscal year. Of that number, 41 were in abeyance at the request of the parties, often because parties are attempting to negotiate a settlement or are awaiting the outcome of another related appeal before the Tribunal. The remaining 33 matters were all actively progressing in accordance with normal case-management milestones towards their scheduled hearing date.

Appeals activity in 2021-22

	Cases Brought Forward from Previous Fiscal Year	Cases Received in Fiscal Year	Total	Total Decisions Issued	Cases Withdrawn/ Closed/ No Longer in Abeyance	Cases Outstanding (March 31, 2022)
Customs Act (AP)	56	44	100	14	24	62
Of which:						
In abeyance	30					29
Decision pending	9					6
Scheduled	11					21
To be scheduled	6					6
Special Import Measures Act (EA)	10	6	16	4	0	12
Of which:						
In abeyance	0					6
Decision pending	7					4
Scheduled	1					1
To be scheduled	2					1
Extension of Time	0	2	2	1	1	0

Sample of noteworthy decisions under the customs and excise appeals mandate

Western Alliance Tubulars Ltd. and Victoria International Tubular Corporation, and Algoma Tubes Inc., Prudential Steel ULC and Tenaris Global Services (Canada) Inc. (EA-2019-006 and EA-2019-007)

These were the first appeals of this kind. In 2017, SIMA was amended to provide interested parties with the ability to ask the CBSA to verify whether goods fall within the scope of trade remedy measures that are in force. Interested stakeholders that may ask the CBSA for a scope ruling include importers, exporters, foreign producers, Canadian domestic industries, or any other person who has a substantial interest in a matter. This compliance measure strengthens Canada's trade remedies regime by providing additional certainty and predictability to stakeholders as to whether SIMA duties apply to a good or not. The 2017 amendments also provide for a right of appeal of the CBSA's scope decisions to the Tribunal.

In this matter, domestic producers sought to verify whether certain imported insulated tubing (IT) and vacuum-insulated tubing (VIT) were of the same description as the goods that fell within the scope of the oil country tubular goods (OCTG) originating in or exported from China that were covered by the Tribunal's finding in inquiry NQ-2009-004. The CBSA had determined that they did not. The appellants challenged that finding at the Tribunal. The Tribunal ruled that the goods did indeed fall within the scope of goods subject to the Tribunal's finding in inquiry NQ-2009-004 and, therefore, that they are subject to duty.

The Tribunal considered the physical characteristics and technical specifications of the goods in issue, their uses, their channels of distribution and their promotional material and documentation. The Tribunal found that the goods in issue met the main governing features of the description of the NQ-2009-004 goods, namely tubing meeting American Petroleum Institute (API) specification SCT or an equivalent standard. The Tribunal also found that IT/VIT were used to perform the same fundamental task as non-insulated OCTG, i.e. to convey fluids in downhole wells.

Pier 1 Imports (U.S.), Inc. (AP-2019-047)

This appeal related to a decision concerning the value for duty of decorative home furnishings and accessories. For several years, the CBSA had accepted that goods imported by Pier 1 Imports (U.S.), Inc. (Pier 1) be valued for purposes of duty calculation purposes based on a mutually agreed valuation methodology that had settled previous litigation. The agreement provided that Pier 1 had to advise the CBSA of any material change in its circumstances. Further to a verification, the CBSA determined that Pier 1 underwent a material change in corporate operations that ought to have been notified to the CBSA. As a result, the CBSA revised the applicable valuation methodology and the duty payable for transactions spanning four years. The appeal concerned the applicability of the earlier agreement and the proper valuation methodology.

The Tribunal determined that an earlier agreement is not enforceable by the Tribunal and, instead, that a flexible or modified application of the computed value method was the most appropriate method of valuation (as provided by section 53 of the *Customs Act*).

Withings Inc. (AP-2020-003)

At issue was whether body cardio Wi-Fi smart scales and body analyzers were properly classified as “[p]ersonal weighing machines, including baby scales; household scales”, as determined by the CBSA, or whether they should be classified as “[o]ther instruments and apparatus”, as submitted by Withings Inc. The appeal was dismissed.

The Tribunal found that the goods in issue were subject to Note 3 to Section XVI of the *Customs Tariff*, which directs that multi-function machines and composite machines be classified according to their principal function. A similar provision is found under Note 7 to Chapter 84 of the *Customs Tariff*. The Tribunal was satisfied that the goods in issue were multi-function machines capable of measuring and tracking various body composition elements but that they were first and foremost personal weighing devices. The Tribunal found that the goods were not instruments and apparatus for physical or chemical analysis, as the evidence revealed that they were not high-precision instruments and apparatus of the types described in the explanatory notes to the heading describing such goods.

Amcor Flexibles Capsules Canada Inc. (AP-2020-023)

At issue was whether various models of plastic disc-shaped bottle cap liners were properly classified as “other articles of plastics”, as determined by the CBSA, or whether they should be classified as “gaskets”, as submitted by Amcor Flexibles Capsules Canada Inc. The appeal was allowed.

In this matter, the Tribunal did not consider it appropriate to apply the shared meaning rule of statutory interpretation as it did not see a discrepancy between the ordinary meanings of the English term “gaskets” and the French term “joints”. The *Customs Tariff* provided little or no guidance to assist in defining the scope of the term “gaskets” or “joints”. Therefore, the Tribunal turned to the ordinary meaning of the terms. The Tribunal found that the terms “gaskets” and “joints” identify a good that is a piece of material, which is used as a joint and that serves as a seal to make a joint fluid-tight or leakproof, as was the case for the goods in issue.



SAFEGUARD REFERENCE

International trade rules allow Canada to temporarily restrict imports to allow Canadian producers to adapt. These temporary measures are called safeguards.

The Tribunal has the authority to inquire into:

- safeguard complaints from Canadian producers; and
- safeguard references from the Government of Canada.

Complaints from Canadian producers can cover:

- imports from all countries (global safeguards); and
- imports from countries with which Canada has signed a free trade agreement (bilateral safeguards).

When directed by the Government, the Tribunal can also recommend appropriate remedies to offset the harmful effects of import surges.

In 2018, the Governor in Council directed the Tribunal to conduct a safeguard inquiry concerning the importation of certain steel goods into Canada. Further to the 2019 safeguard inquiry, followed by the *Order Imposing a Surtax on the Importation of Certain Steel Goods* (Surtax Order), the Tribunal was asked to conduct inquiries, at specified six-month intervals, regarding requests for the exclusion of certain products from the safeguard measures enacted in the Surtax Order.

During this fiscal year the Tribunal conducted its fourth and final inquiry, in advance of the expiry of the Surtax Order on October 24, 2021, and submitted a report to the Governor in Council in response to the *Order Referring to the Canadian International Trade Tribunal, for Inquiry into and Reporting on, the Matter of the Exclusion of Certain Steel Goods from the Order Imposing a Surtax on the Importation of Certain Steel Goods*. The Tribunal received one request for the exclusion of a stainless steel wire product. Having considered the arguments and evidence of the parties to the proceeding, the Tribunal recommended that the exclusion request be granted. The Tribunal issued its report on July 9, 2021.



JUDICIAL REVIEWS

Judicial or Panel Reviews of Tribunal Decisions

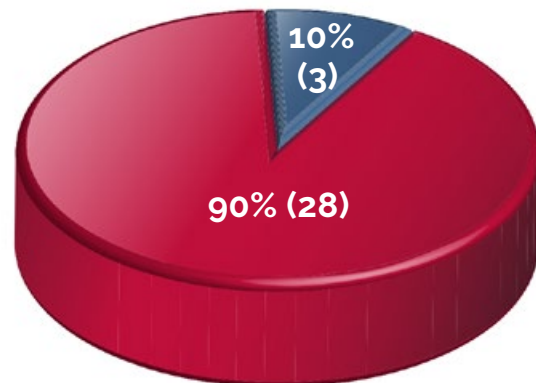
Any person affected by a Tribunal finding or order under the *Special Import Measures Act* (SIMA), and any person affected by Tribunal procurement findings and recommendation, can apply for judicial review by the Federal Court of Appeal (FCA) on grounds of, for instance, denial of natural justice or error of law. Tribunal orders and decisions made under the *Customs Act* can be appealed to the FCA or, under the *Excise Tax Act*, to the Federal Court.

Judicial Reviews of SIMA Cases

During the fiscal year, applications for judicial review were brought forth in relation to Tribunal decisions in three SIMA proceedings: *Decorative and Other Non-structural Plywood* ([NQ-2020-002](#)), *Concrete Reinforcing Bar* ([NQ-2020-004](#)) and *Certain Container Chassis* ([PI-2021-002](#)).

The judicial review relating to *Concrete Reinforcing Bar* was discontinued by the applicant during the fiscal year, and the judicial review relating to *Certain Container Chassis* was dismissed on consent between the parties. The judicial review of *Decorative and Other Non-Structural Plywood* remained pending at the end of the fiscal year.

Judicial Reviews of SIMA Cases



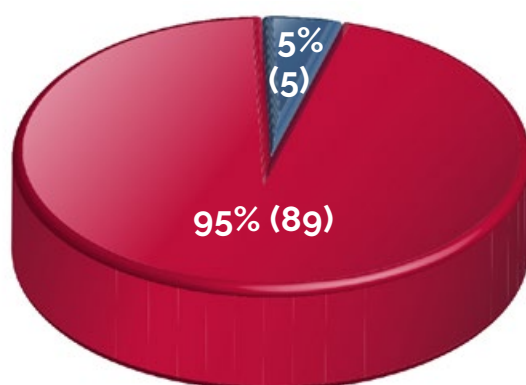
- Number of decisions challenged before the Federal Court of Appeal
- Number of cases received during the fiscal year



Judicial Reviews of Procurement Complaints

	<u>PR-2020-068</u>	<u>PR-2021-006</u>	<u>PR-2021-007</u>	<u>PR-2021-040</u>	<u>PR-2021-046</u>
Complainant	Heiltsuk Horizon Maritime Services Ltd./Horizon Maritime Services Ltd.	Wärtsilä Canada Incorporated	Wärtsilä Canada Incorporated	Cadex Inc.	Pacific Northwest Raptors Ltd.
Date of Tribunal's decision	May 3, 2021	August 3, 2021	August 3, 2021	January 7, 2022	February 21, 2022
FCA Court Status	Pending	Pending	Pending	Discontinued	Discontinued

Judicial Reviews of Procurement Cases

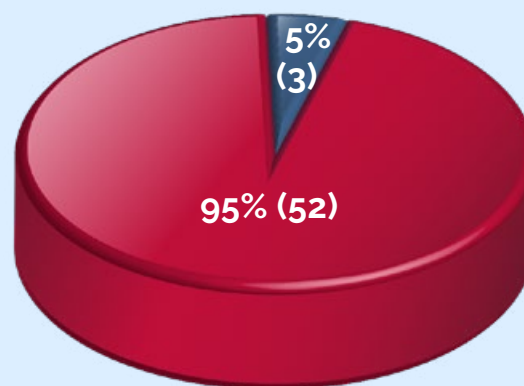


● Tribunal decisions challenged before the Federal Court of Appeal
● Number of procurement complaints received during the fiscal year

Judicial Reviews of *Customs Act* Appeal Decisions

	<u>AP-2018-048</u>	<u>AP-2020-020</u>	<u>AP-2019-047</u>
Appellant	Michael Kors (Canada) Holdings Ltd.	Canadian Tire Corporation Limited	Pier 1 Imports (U.S.), Inc.
Date of Tribunal's decision	May 3, 2021	August 3, 2021	September 2, 2021
FCA Court Status	Pending	Pending	Pending

Judicial Reviews of Appeal Decisions



● Number of decisions challenged before the Federal Court of Appeal
● Number of cases received during the fiscal year

Review by Canada-United States-Mexico Agreement Binational Panel

Tribunal findings or orders involving goods from the United States and Mexico may be reviewed by a binational panel established under the Canada-United States-Mexico Agreement. A binational panel review is triggered on application from an interested party and replaces judicial review before the FCA. A binational panel may uphold the Tribunal decision under review or [remand](#) it back to the Tribunal for a determination.

During the last fiscal year, no new requests were made for review by a binational panel. One binational panel review of a Tribunal decision, initiated in a prior fiscal year and relating to gypsum board from the United States, remained pending at the end of this fiscal year. The binational panel held a hearing on the matter on March 24, 2022, and is expected to render its decision within 90 days of that date.

World Trade Organization Dispute Resolution

Governments that are members of the World Trade Organization (WTO) may challenge the Tribunal's 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.



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GLOSSARY

Anti-dumping duties	Duties in the form of a tax on imported goods that were dumped on the Canadian market and subject to a finding of injury of the Tribunal. The application of anti-dumping duties is intended to offset the amount of dumping on imported goods and give to the goods produced in Canada an opportunity to compete fairly with the imported goods.
Countervailing duties	Duties in the form of a tax on imported goods that were subsidized and subject to a finding of injury of the Tribunal. The application of countervailing duties is intended to offset the amount of subsidizing on imported goods and give to the goods produced in Canada an opportunity to compete fairly with the imported goods.
Decision, Determination, Finding and Order	<p>A decision is a judgment made by the Tribunal in the context of its mandates, including on any matter that arises during a proceeding.</p> <p>A determination is a Tribunal decision resulting from a preliminary injury inquiry under SIMA and/or an inquiry into a procurement complaint.</p> <p>A finding is a Tribunal decision resulting from a final injury inquiry under SIMA.</p> <p>An order is a Tribunal decision resulting from an expiry, an expiry review or an interim review. It can also be a procedural decision in any type of case under the Tribunal's mandates.</p>
Designated contract	A contract for the supply of goods or services that has been or is proposed to be awarded by a government institution.
Judicial review	A review of a Tribunal decision by the Federal Court of Appeal or Federal Court.
Potential supplier	A bidder or prospective bidder on a designated contract.
Quasi-judicial	A partly judicial character by having the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of statutes and to make decisions in the general manner of courts.
Remand (verb)	To send a case to another court. A party displeased with a Tribunal decision can ask the Federal Court of Appeal to overturn it. The Court can overturn that decision itself or refer it back ("remand it") to the Tribunal with or without instructions on how it should decide the matter again.

Orders and rulings issued in 2021-22

The tables below contain statistics pertaining to orders and rulings issued as part of the Tribunal's proceedings during fiscal year 2021-22. These statistics illustrate the complexity of the cases considered by the Tribunal.

Orders and Rulings issued in 2021-22 – Procurement

Orders	
Disclosure orders	0
Cost award orders	20
Compensation orders	2
Production orders	0
Postponement of award orders	10
Rescission of postponement of award orders	6
Directions/administrative rulings	
Requests for information	0
Motions	5
Subpoenas	0

Orders and Rulings issued in 2021-22 – SIMA

Orders	
Disclosure orders	42
Production orders	3
Directions/administrative rulings	
Requests for information	158
Motions	4
Subpoenas	9



The Tribunal empowers
Canadian and international businesses
by ensuring access to fair, transparent and
timely processes and adjudication.