



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

2023-2024

ANNUAL REPORT





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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 all First Nations, Inuit and Métis peoples of Canada, their valuable past and their ongoing contributions to the land that we all share.

We invite you to join the journey to reconciliation and to [learn more about all First Nations, Inuit and Métis peoples of Canada.](#)

We recognize that we still have much to do; reconciliation is an ongoing process for us all. Our goal is to contribute to reconciliation in a meaningful way.

A MESSAGE FROM THE CHAIRPERSON AND VICE-CHAIRPERSON



June 28, 2024

We are pleased to present the annual report of the Canadian International Trade Tribunal (Tribunal), for the period of April 1, 2023, to March 31, 2024. This report covers the Tribunal's activities, highlights and successes from the past year.

Canadian companies rely on the Tribunal to investigate whether the dumping and subsidizing of imports has caused injury to the domestic industry, to hear customs and excise appeals, and to decide on government procurement complaints. The Tribunal is an independent, quasi-judicial body with the same powers, rights and privileges as a superior court of record for matters necessary or proper for the due exercise of its jurisdiction. The Tribunal offers businesses and Canadians impartial recourse in customs and trade matters, including ensuring that trade agreements are complied with. The Tribunal, supported by Secretariat staff, works hard to excel in delivering on these responsibilities.

This year again, the Tribunal's caseload remained high. The number of dumping and subsidizing expiry reviews initiated this year greatly increased due to the new trade remedy findings adopted in recent years and now scheduled for review. Although the Tribunal received slightly fewer procurement complaints, the proportion of those accepted for inquiry grew. This tested the Tribunal's capacity to a significant extent, especially in light of delays in appointments and renewals of Tribunal members, coupled with resource constraints.

Despite these challenges, the Tribunal diligently fulfilled its core mandates. The dedication of the Secretariat's staff has been crucial in helping us stay on schedule and meet statutory deadlines. The Tribunal, along with the Secretariat, remain focused on improving operations and streamlining processes to ensure that we are able to continue to execute on our mandates efficiently and effectively.

The Tribunal has resumed in-person hearings, particularly for trade remedy cases. To promote access to justice, the Tribunal is improving its ability to conduct virtual and hybrid hearings. These types of hearings provide the greatest possible access to proceedings for parties, intervenors and witnesses, regardless of their location or financial means.

Even though the Tribunal received fewer procurement complaints last year, what's noteworthy is the growing number of self-represented parties filing complaints with the Tribunal. Of the 66 complaints filed this year, 51 were filed by self-represented parties. This pushed the Tribunal to find solutions to ensure access to justice for self-represented parties across its procurement and appeals mandates.

We continue to face tight legislative deadlines under our trade remedy and procurement mandates. Along with capacity challenges, our heavy workload and tight deadlines have kept us from meeting our internal service standard of 120 days for issuing appeals decisions. We remain fully committed to issuing these appeals decisions as early as is feasible for the Tribunal.

This year, the Tribunal has continued to maintain its dialogue with international counterparts. The Tribunal's Chairperson attended, as a panellist, the World Trade Organization workshop for heads of investigation authorities in Geneva in May 2023. During this key international meeting, the Chairperson and the Chief Economist, Greg Gallo, had fruitful discussions with foreign counterparts, including those from the European Union, the United Kingdom, the United States, Brazil, India and Australia. In addition, the Tribunal's Vice-Chairperson, Bree Jamieson-Holloway, and Member Cheryl Beckett attended the Georgetown University International Trade Update in Washington in June 2023. This significant international gathering provided them with the opportunity to engage in meaningful conversations with key counterparts from the United States.

The Tribunal is pleased to have welcomed Susana Lee as Member during the past year. With over a decade of experience in trade remedies, she brings valuable expertise to the Tribunal. Her five-year term began on January 29, 2024. We also welcome the renewal of members Beckett, Bujold and Beaubien for a second term of five years.

As we look ahead to the 2024–25 fiscal year, we do so with enthusiasm and, as always, a commitment to serving parties and the Canadian public. We will continue to maintain our focus on the same strategic priorities, acknowledging their significance and recognizing the ongoing need for progress in each area.

Striving for excellence: our core and unchanging priority

The Tribunal excels in trade remedy inquiries, customs appeals and procurement complaints, enjoying a strong reputation domestically and internationally for its rigorous contributions to Canada's trade obligations. We will continue to adopt measures to uphold our credibility and leadership.

Strengthening economic analysis

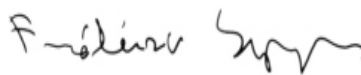
We will continue to enhance our economic analysis capacity, particularly for trade remedy inquiries, ensuring that our conclusions are based on the most solid, evidence-based analysis. The Tribunal and its secretariat will develop and implement strategies to strengthen this capacity through the Trade Remedies Investigation Branch.

Access to justice and equity, diversity and inclusion

Ensuring access to justice is vital for the Tribunal. We will continue to prioritize and enhance accessibility, particularly for self-represented parties. Additionally, we are committed to fostering a workplace that values diversity in people, experiences and ideas.

By maintaining these strategic priorities, we can build on the progress made over the past year and further our mission to better serve all Canadians.

The future remains uncertain with respect to the evolution of trade relations and how it could have an impact on the Tribunal's future caseload. Despite facing tighter budgetary constraints, we continue to endeavour to execute our mandates with dedication and excellence. We remain committed to serving Canadians by upholding the fair, transparent and timely administration of both domestic and international trade regulations.



Frédéric Seppey
Chairperson



Bree Jamieson-Holloway
Vice-Chairperson

OUR YEAR IN NUMBERS

Trade remedy inquiries

The effects of the *Special Import Measures Act* (SIMA) duties applied to

\$3.8B of imports & **\$11.6B** of shipments

in industries employing **nearly 31,000 people**.



The Tribunal incorporated a deeper analysis of the effects of dumping and subsidizing allegations on domestic workers and facilitated analysis of massive importation allegations, consistent with implementing the **latest changes to the SIMA legislation**.

Procurement reviews

The Tribunal received

66 complaints

about federal government procurement processes estimated to represent over

\$730 million in federal contracts.



The Tribunal conducted an investigation on

wind towers

(novel capital good for a trade remedy inquiry involving regional considerations) and began an inquiry into wire rod.



Across all mandates

42 Hearing days

6

in-person

22

virtual

14

hybrid

Over **88 witnesses** appeared before the Tribunal in customs appeals and trade remedy inquiries, demonstrating the often complex nature of these cases.

Customs and excise appeals

Interesting products:



gold coins,



surgical gloves and



plastic cases designed to hold cannabis cigarettes.



73

File hearings



119

Decisions issued



282,287

Electronic pages handled by the Registry

WHAT WE DO

The Canadian International Trade Tribunal is recognized, in Canada and on the international stage, for its ability to adjudicate trade disputes in a rigorous, fair, transparent and timely fashion.

The Tribunal provides Canadian and international businesses with [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 has all the powers, rights and privileges vested in a superior court of record concerning matters necessary or proper for the exercise of its jurisdiction. The Tribunal reports to Parliament through the Minister of Finance. It conducts its proceedings as informally and expeditiously as possible.

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 of similar goods in their home markets or at prices that do not cover costs and a reasonable amount for profits. Subsidizing means that foreign producers 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, disrupting supply chains and harming Canadian producers of these goods and, ultimately, the people employed to make those goods.

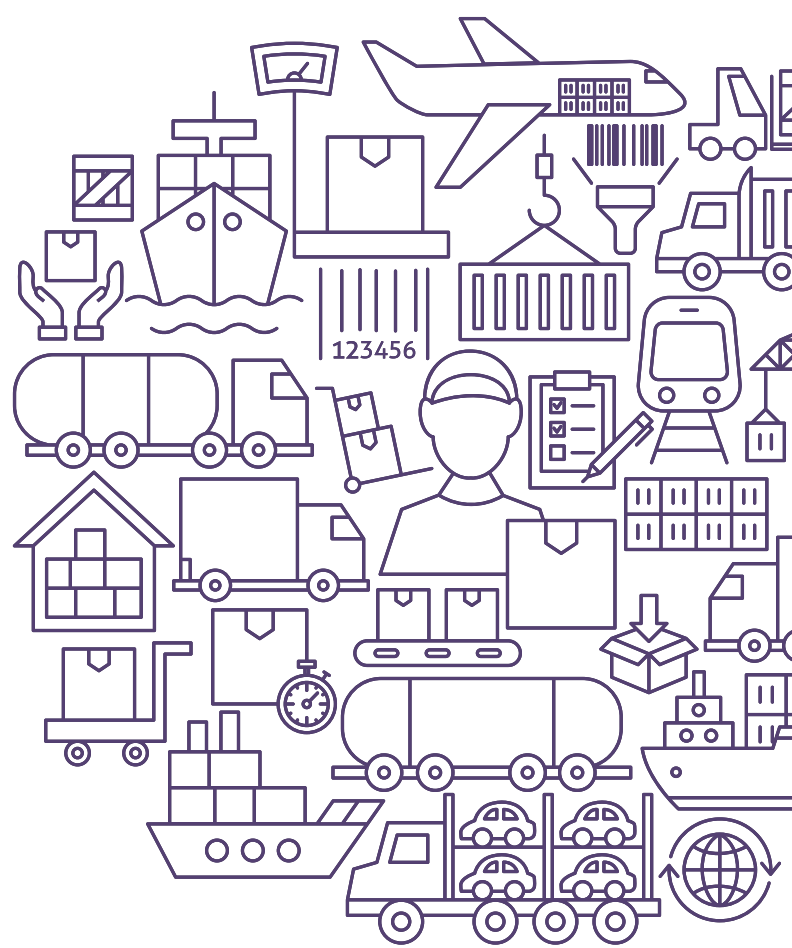
If the Tribunal determines that imported goods are causing injury or threatening to cause injury to a domestic industry, then [anti-dumping](#) or, in the case of subsidizing, [countervailing duties](#) apply to the imports for a period of five years. A finding of injury or threat of injury expires after five years unless the Tribunal continues it following an expiry review. A finding can also be rescinded early under [certain circumstances](#).

Procurement inquiries

The Tribunal inquires into complaints by [potential suppliers](#) of 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. The Tribunal 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 the origin of imported goods. Appeals under SIMA relate to whether certain goods fall within the scope of trade remedy measures 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 conducts safeguard references upon request 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 Canadian International Trade Tribunal


The Tribunal has a long and rich history.¹

| | |
|-------------|--|
| 1888 | The Board of Customs is established. Its powers include the review of matters such as 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 General Agreement on Tariffs and Trade 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 CITT. |

 customs appeals

 first merger

 dumping and subsidizing

 second merger and procurement reviews (all mandates of the Tribunal to this date)

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



From left to right: Eric Wildhäber, Bree Jamieson-Holloway, Cheryl Beckett, Georges Bujold, Susana Lee, Susan Beaubien, Frédéric Seppey, Randolph W. Heggart and Serge Fréchette

Members of the Tribunal

The Tribunal may be composed of up to seven full-time permanent members, including the Chairperson and the 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, which can be renewed once. Up to five temporary members may also be appointed.

Members have a variety of educational backgrounds and experience.

Frédéric Seppey is the Chairperson of the Tribunal and Bree Jamieson-Holloway is the Vice-Chairperson. In 2023-24, the Tribunal operated with seven permanent members and two temporary members. As of March 31, 2024, the Tribunal's members are:

- » **Susan Beaubien** (Permanent member, mandate effective until March 20, 2029)
- » **Cheryl Beckett** (Permanent member, mandate effective until November 23, 2028)
- » **Georges Bujold** (Permanent member, mandate effective until November 23, 2028)
- » **Serge Fréchette** (Temporary part-time member, mandate effective until June 9, 2025)
- » **Randolph W. Heggart** (Permanent member, mandate effective until June 17, 2024)
- » **Bree Jamieson-Holloway** (Vice-Chairperson, mandate effective until December 4, 2027)
- » **Susana Lee** (Permanent member, mandate effective until January 28, 2029)
- » **Frédéric Seppey** (Chairperson, mandate effective until December 31, 2025)
- » **Eric Wildhaber** (Temporary member, mandate effective until July 24, 2025)

Spotlight on the CITT Secretariat

The Tribunal is supported by a secretariat composed of about 60 professionals². Secretariat staff are employees of the Administrative Tribunals Support Service of Canada (ATSSC).

The ATSSC is responsible and accountable for providing support services and facilities to the Tribunal and to 11 other federal administrative tribunals. These services include the specialized services required to support the mandate of each tribunal (e.g., registry, legal services and trade investigation services for the CITT), as well as internal services (human resources, financial services, information management and technology, accommodation, security, planning and communications).

Legal services (16 full-time employees)

The legal services team provides legal research and advice to members in support of the Tribunal's mandates, as well as various legal support services in the conduct of proceedings before the Tribunal.



Legal services



Registry services

Registry services (15 full-time employees)

The registry team ensures the effective management of the administrative processes related to the Tribunal's mandates. It provides administrative support to the Tribunal to ensure that cases are handled as informally and expeditiously as possible. The registry team also liaises between the Tribunal and parties to a proceeding. Its main responsibilities are to:

- » communicate with parties on behalf of the Tribunal;
- » compile the exhibits on behalf of the Tribunal to produce the official case record;
- » manage the logistics of the Tribunal's in-person, virtual and hybrid hearings; and
- » issue decisions on behalf of the Tribunal.

2. Some employees could not be present for the team pictures.

Trade remedies investigations branch (18 full-time employees)

The trade remedies investigations branch (TRIB) is composed of data services advisors and economic analysts. TRIB supports the Tribunal by providing economic data and analysis in dumping and subsidizing cases, primarily by developing questionnaires and using the information received to produce investigation reports on the market for the goods under investigation. TRIB also provides economic advice and analysis to Tribunal members on discrete economic issues that arise in the course of investigations and deliberations.

Editing services (4 full-time employees)

The Editing services team edits and translates Tribunal decisions as well as various documents. It also publishes content on the Tribunal's website and prepares communication products (notices, press releases and letters to parties and stakeholders).



CASELOAD

The Tribunal's caseload over the last five years has remained steady, especially with respect to procurement reviews, dumping and subsidizing expiry reviews and customs appeals. The table below contains some key indicators in this regard.

Tribunal caseload overview

| | Cases received | | | | | Total decisions/reports issued | | | | |
|---------------------------------------|----------------|---------|---------|---------|---------|--------------------------------|---------|---------|---------|---------|
| | 2023-24 | 2022-23 | 2021-22 | 2020-21 | 2019-20 | 2023-24 | 2022-23 | 2021-22 | 2020-21 | 2019-20 |
| Trade remedies | | | | | | | | | | |
| Preliminary injury inquiries (PI) | 2 | 0 | 6 | 7 | 2 | 1 | 2 | 4 | 7 | 2 |
| Final injury inquiries (NQ) | 1 | 1 | 6 | 5 | 2 | 1 | 1 | 9 | 3 | 1 |
| Interim reviews (RD) | 1 | 0 | 0 | 3 | 2 | 0 | 0 | 1 | 3 | 2 |
| Expiry reviews (RR) | 9 | 5 | 6 | 5 | 6 | 6 | 6 | 4 | 6 | 8 |
| Procurement inquiries | | | | | | | | | | |
| Procurement (PR) | 66 | 79 | 89 | 102 | 72 | 61 | 74 | 98 | 83 | 65 |
| Customs and excise appeals | | | | | | | | | | |
| Appeals (AP) ¹ | 27 | 43 | 44 | 32 | 47 | 23 | 16 | 13 | 12 | 40 |
| Enforcement appeals (EA) ² | 8 | 4 | 6 | 1 | 10 | 2 | 3 | 4 | 1 | 0 |
| Extensions of time (EP) ³ | 2 | 4 | 2 | 1 | 2 | 4 | 2 | 1 | 1 | 3 |

1. Under either the *Customs Act* or the *Excise Tax Act*.

2. Under the *Special Import Measures Act*.

3. Under either the *Customs Act* or the *Excise Tax Act*.

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 the price of similar goods in the foreign producer's home market or at prices that do not cover costs and a reasonable amount for profits (dumping); or

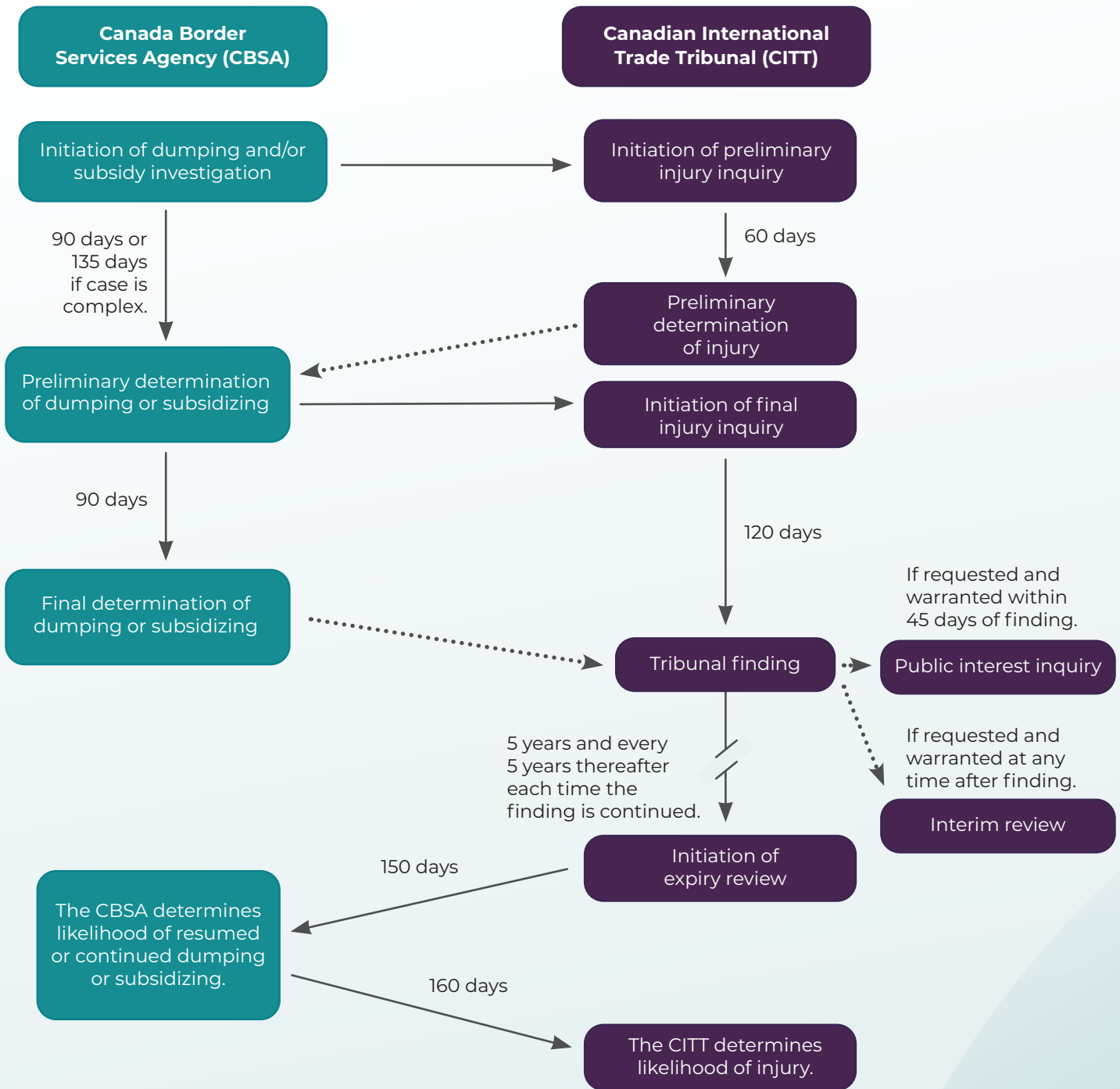
» that have benefited from certain types of government grants or other assistance from foreign governments (subsidizing).

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.



Special Import Measures Act process chart

The following diagram illustrates the investigative process under the *Special Import Measures Act*.



Injury inquiries

Preliminary injury inquiries (PI)

The CBSA generally initiates a dumping or subsidizing investigation following a complaint from a domestic producer. 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 one preliminary injury inquiry concerning certain wind towers during the fiscal year. Another preliminary injury inquiry, concerning certain wire rod, was initiated and is ongoing at the end of the fiscal year.

Preliminary injury inquiries initiated or completed in 2023-24

| | PI-2023-001 | PI-2023-002 |
|-------------------------------|---------------------------------|--------------------------|
| Product | Wind Towers | Wire Rod |
| Type of case | Dumping and subsidizing | Dumping |
| Country or countries | China | China, Egypt and Vietnam |
| Date of decision | June 20, 2023 | N/A |
| Determination | Reasonable indication of injury | Pending |
| Participants | | |
| » in support of the complaint | 1 | |
| » opposed to the complaint | 2 | |
| » no views expressed | 4 | |
| Total | 7 | |

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 it continues its investigation until it makes a final determination of dumping or subsidizing.

The Tribunal must issue its finding of injury 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 initiated and completed one final injury inquiry this fiscal year concerning certain wind towers.

Final injury inquiry completed in 2023-24

| | NQ-2023-001 |
|--------------------------------|-------------------------|
| Product | Wind Towers |
| Type of case | Dumping and subsidizing |
| Country | China |
| Date of finding | November 17, 2023 |
| Finding | Injury |
| Questionnaires received | 7 |
| Witnesses heard | 13 |
| Participants | |
| » in support of the complaint | 2 |
| » opposed to the complaint | 5 |
| » no views expressed | 3 |
| Total | 10 |

Expiry reviews (RR)

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 order or finding 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 those goods.

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

The Tribunal completed six expiry reviews in the fiscal year concerning line pipe, stainless steel sinks, copper pipe fittings, liquid dielectric transformers, steel piling pipe and dry wheat pasta.

The Tribunal also initiated eight expiry reviews which were still in progress at the end of the fiscal year. These reviews concerned steel plate, seamless casing, sucker rods, cold-rolled steel, corrosion-resistant steel sheet and carbon steel welded pipe (three separate findings).

Expiry reviews completed in 2023-24

| | RR-2022-001 | RR-2022-002 | RR-2022-003 | RR-2022-004 | RR-2022-005 | RR-2023-001 |
|-------------------------------------|----------------------------------|-------------------------|-------------------------|--------------------------------|-------------------------|-------------------------|
| Product | Carbon and Alloy Steel Line Pipe | Stainless Steel Sinks | Copper Pipe Fittings | Liquid Dielectric Transformers | Steel Piling Pipe | Dry Wheat Pasta |
| Type of case | Dumping | Dumping and subsidizing | Dumping and subsidizing | Dumping | Dumping and subsidizing | Dumping and subsidizing |
| Country | South Korea | China | Vietnam | South Korea | China | Türkiye |
| Date of decision | September 6, 2023 | October 4, 2023 | November 22, 2023 | December 20, 2023 | January 17, 2024 | March 20, 2024 |
| Decision | Finding continued | Order continued | Finding continued | Order continued | Order continued | Finding continued |
| Questionnaires received | 29 | 18 | 18 | 19 | 13 | 19 |
| Witnesses heard | 15 | 0* | 5 | 21 | 0* | 0* |
| Participants | | | | | | |
| » in support of the continuation | 5 | 2 | 2 | 6 | 4 | 7 |
| » opposed to the continuation | 0 | 0 | 0 | 1 | 0 | 2 |
| » no views expressed | 5 | 0 | 1 | 0 | 1 | 0 |
| Total number of participants | 10 | 2 | 3 | 7 | 5 | 9 |

* "0" witnesses means that these expiry reviews had file hearings (hearing by way of written submissions).

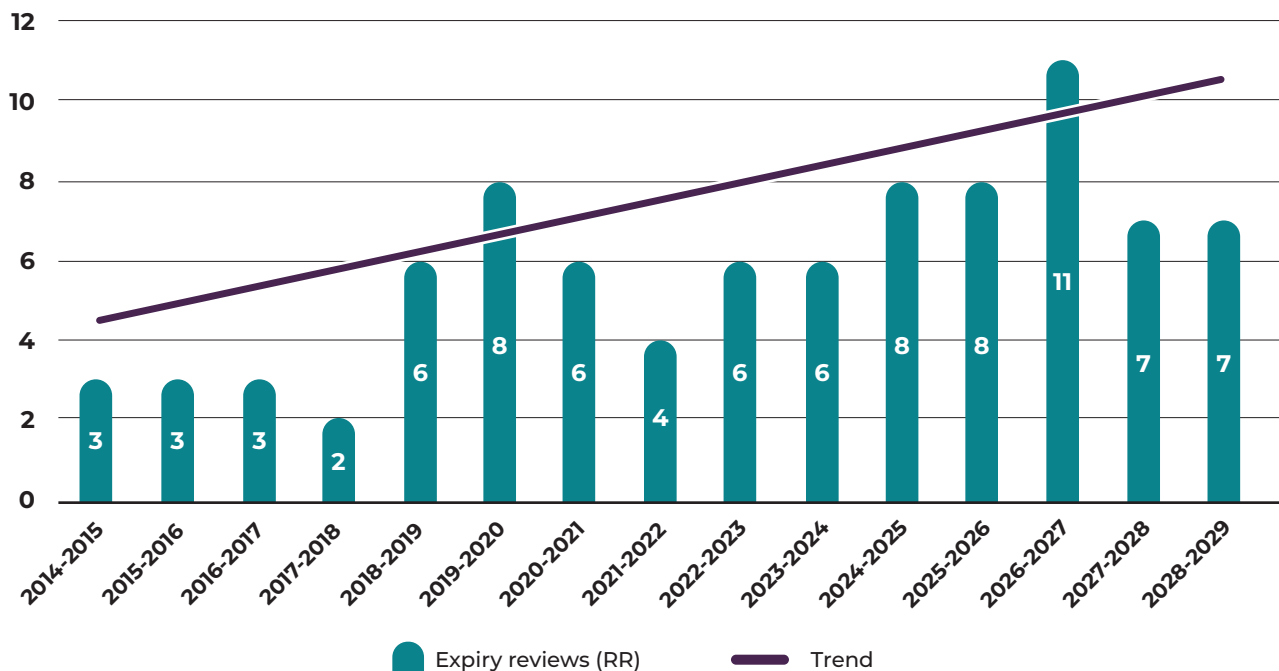
Historical trend: Expiry reviews

While the number of inquiries in fiscal year 2023-24 was lower than in previous years, the Tribunal continues to experience a long-term trend increase in SIMA-related activity. This is due, in part, to a challenging global trade environment and a high percentage of inquiries and reviews that result in the imposition or the continuation of trade remedy measures.

Anti-dumping and countervailing findings must be reviewed every five years to determine whether the measures remain necessary. The number of expiry reviews completed each year has gradually increased over a ten-year period, from an average of just over three expiry reviews for the 2014-19 period to six for the 2019-24 period. As shown in the following graph, this creates a cyclical but gradual upward trend pressure on the caseload of the Tribunal. For example, there are now 50 injury findings in force³ as of March 31, 2024, all of which will come up for review within the next five years.



Expiry reviews completed or planned – 2014-29



3. A finding may concern more than one country and may therefore include more than one anti-dumping or countervailing measure.

Interim reviews (RD)

An interim review is when the Tribunal conducts an early review of its findings of injury or threat of injury, or other related orders at any time. It may be started on the Tribunal's own initiative or at the request of the Minister of Finance, the CBSA or any other person or government.

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. In an interim review, the Tribunal 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 received a request for an interim review of its finding concerning photovoltaic modules and laminates. This request remains under consideration at the end of the fiscal year.

Sample of noteworthy decisions under the *Special Import Measures Act* mandate

Wind Towers (NQ-2023-001)

On November 17, 2023, the Tribunal issued its finding in inquiry NQ-2023-001 about the dumping and subsidizing of certain steel utility wind towers and their sections originating in or exported from China. The complaint was brought by Marmen Inc., the only Canadian producer of wind towers located in Quebec.

The purpose of the Tribunal's inquiry was to determine whether imports of wind towers from China caused material injury to Marmen. Wind towers are purchased, on a project-by-project basis, by original equipment manufacturers (OEMs) of wind turbines who then assemble and install the towers and turbines at the project site.

The Tribunal examined available bid information for each project and found that the Chinese wind towers were priced significantly lower than wind towers manufactured in Canada and offered by Marmen to OEMs. On that basis alone, it might appear that this price undercutting caused the injury claimed by Marmen during the period of inquiry. However, other evidence showed that the situation was more complicated.



Wind towers are very large and heavy products. Complex logistics are needed to transport a wind tower from the manufacturing facility to the installation site. OEMs are typically responsible for making both transportation arrangements and paying the cost of transport and associated logistics.

After reviewing large volumes of evidence and arguments, the Tribunal concluded that OEMs carefully consider both cost and reliability of transportation logistics when determining transportation routing from the production facility to the project site. In some instances, OEMs may exhibit a preference for an established transportation method that had been used reliably for previous projects.

For wind projects located in western Canada, the Tribunal found that Marmen was disadvantaged, with respect to both cost and increased logistical

complexity, in bidding to supply projects located at geographically distant locations from its production facilities. The logistics of transporting wind towers by land from Quebec to western Canada involved disadvantages that were not faced by wind towers imported from China that were transported by sea from China to ports on the West Coast.

Thus, the Tribunal found that, with respect to projects in Western Canada, factors other than dumping and subsidizing greatly complicated the connection between the dumping and subsidizing of the wind towers imported from China and contributed to the injury suffered by Marmen.

On the other hand, transportation logistics were less of a relevant factor when assessing the effect of dumping and subsidizing with respect to competition between Chinese and domestic wind towers for the supply of project sites that are geographically closer to Marmen's production facilities. In at least one instance, regarding a project located in Quebec, the Tribunal found a strong connection between the dumping and subsidizing of the wind towers imported from China and consequential material injury to Marmen.

As a result, the Tribunal found that the dumping and subsidizing of the Chinese wind towers had caused material injury to the domestic industry. However, the Tribunal limited its finding by excluding Chinese wind towers imported for installation in energy projects located west of the Ontario-Manitoba border.

Liquid Dielectric Transformers (RR-2022-004)

The Tribunal conducted an expiry review to determine whether to continue its order concerning the dumping of large power transformers (LPTs) originating in or exported from the Republic of Korea. These transformers are liquid dielectric transformers and have a top power handling capacity equal to or exceeding 60,000 kilovolt amperes, whether assembled or unassembled and complete or incomplete.

Domestic producers, the United Steel Workers and Unifor supported the continuation of the order. HD Hyundai Electric Co., Ltd., a foreign producer of LPTs, opposed the continuation of the order.



The Tribunal concluded that Korean producers likely have enough capacity to increase exports to Canada and would likely try to find as many export opportunities as possible, including in the Canadian market if the Tribunal allowed the order to expire. Moreover, the nature of LPTs as capital goods (that is, goods that are “made to order” once a sale is made) and how this affects the offer, sale and delivery of LPTs would mean that prices would likely decline before import volumes increased if the order were allowed to expire.

The Tribunal also found that the market for LPTs is less open and transparent than the markets of many products that are bought and sold publicly such as commodities. During its investigation, the Tribunal noted that the value of bids could vary greatly among suppliers, partly because they often inaccurately estimated their competitors’ prices. This led to domestic producers bidding lower than necessary to compete effectively.

Thus, if the order expires, there would likely be a significant increase in the volume of Korean LPTs offered at prices lower than those of domestic producers. This, combined with the limited price transparency in the LPT market, would depress prices in the Canadian market. Consequently, the Tribunal found that, without the order, the domestic industry’s sales and financial situation would be materially worse.

In its assessment of likely injury in this expiry review, the Tribunal also considered the potential impacts the absence of this order may have on workers employed in the transformer industry. The Tribunal found that, if the order expired, there could be a significant negative effect on employment and workers. The domestic producers may need to reduce their workforce if they lose sales. This will significantly impact an industry that strongly depends on highly trained and skilled employees.

Decisions that considered impacts on workers

In June 2022, the *Special Import Measures Act* was amended to provide that assessments of injury must take into account impacts on workers employed in the domestic industry. The *Special Import Measures Regulations* were also amended to include several new factors for the Tribunal to consider when making those assessments, including the effects on hiring, employment levels, and the terms and conditions of employment of workers (e.g., wages, hours worked, pension plans and benefits). These amendments applied to all inquiries and expiry reviews initiated after June 2022. Therefore, the Tribunal considered the new regulatory factors in expiry reviews that concluded during this fiscal year, especially in *Carbon and Alloy Steel Line Pipe* (RR-2022-001), *Copper Pipe Fittings* (RR-2022-003) and *Liquid Dielectric Transformers* (RR-2022-004).



PROCUREMENT REVIEWS

To safeguard the integrity of the Government of Canada's procurement processes, the Tribunal has been vested with the mandate of:

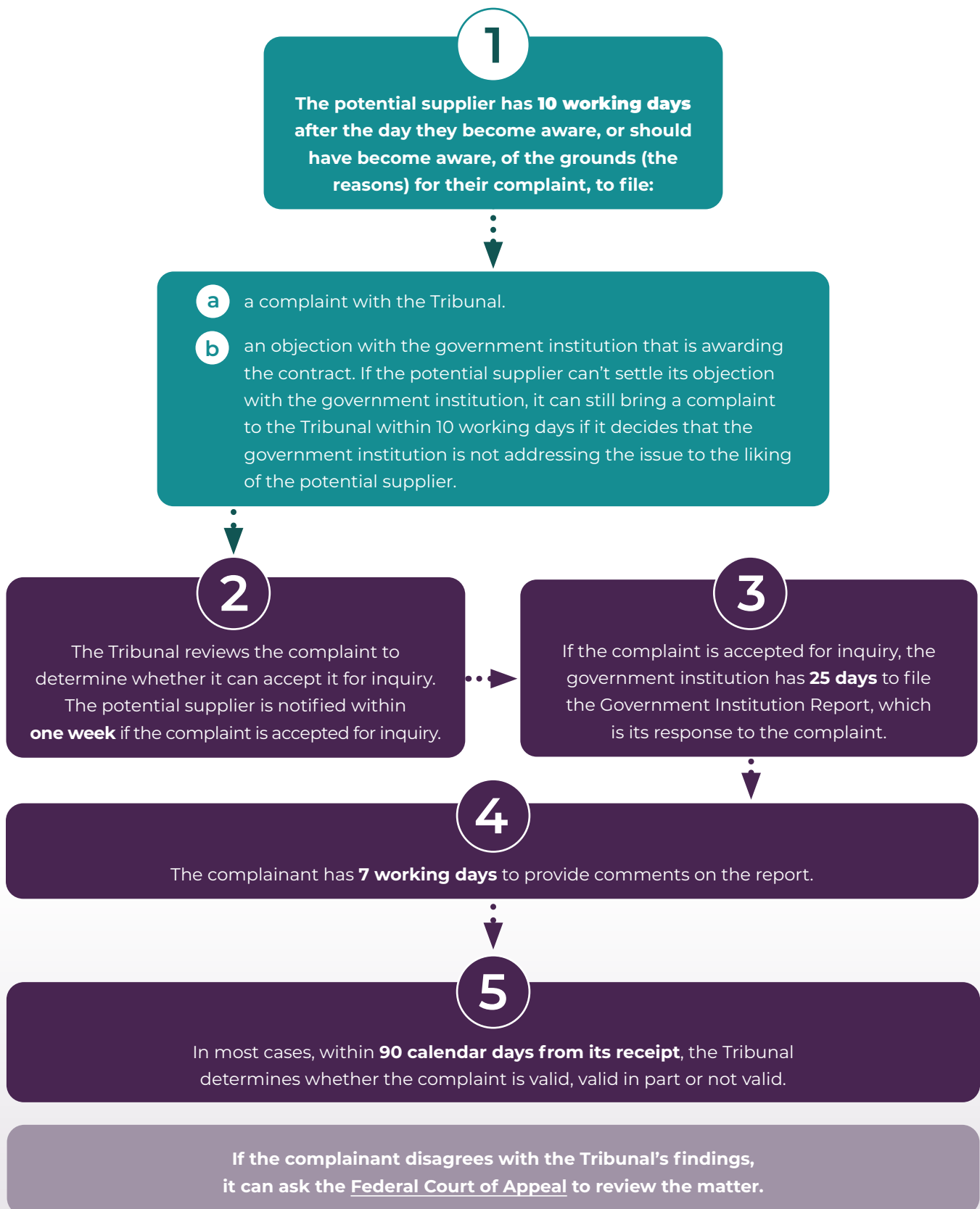
- » inquiring into complaints by potential suppliers of goods or services to the federal government relating to designated contracts valued above certain monetary thresholds;
- » determining whether procurement processes that are the subject of complaints complied with Canada's obligations under certain trade agreements;
- » considering issues such as whether bids were evaluated fairly;
- » recommending remedies and awarding costs; and
- » providing recommendations to federal government institutions about their procurement processes.



There are potentially up to three stages in the Tribunal's consideration of a procurement complaint:

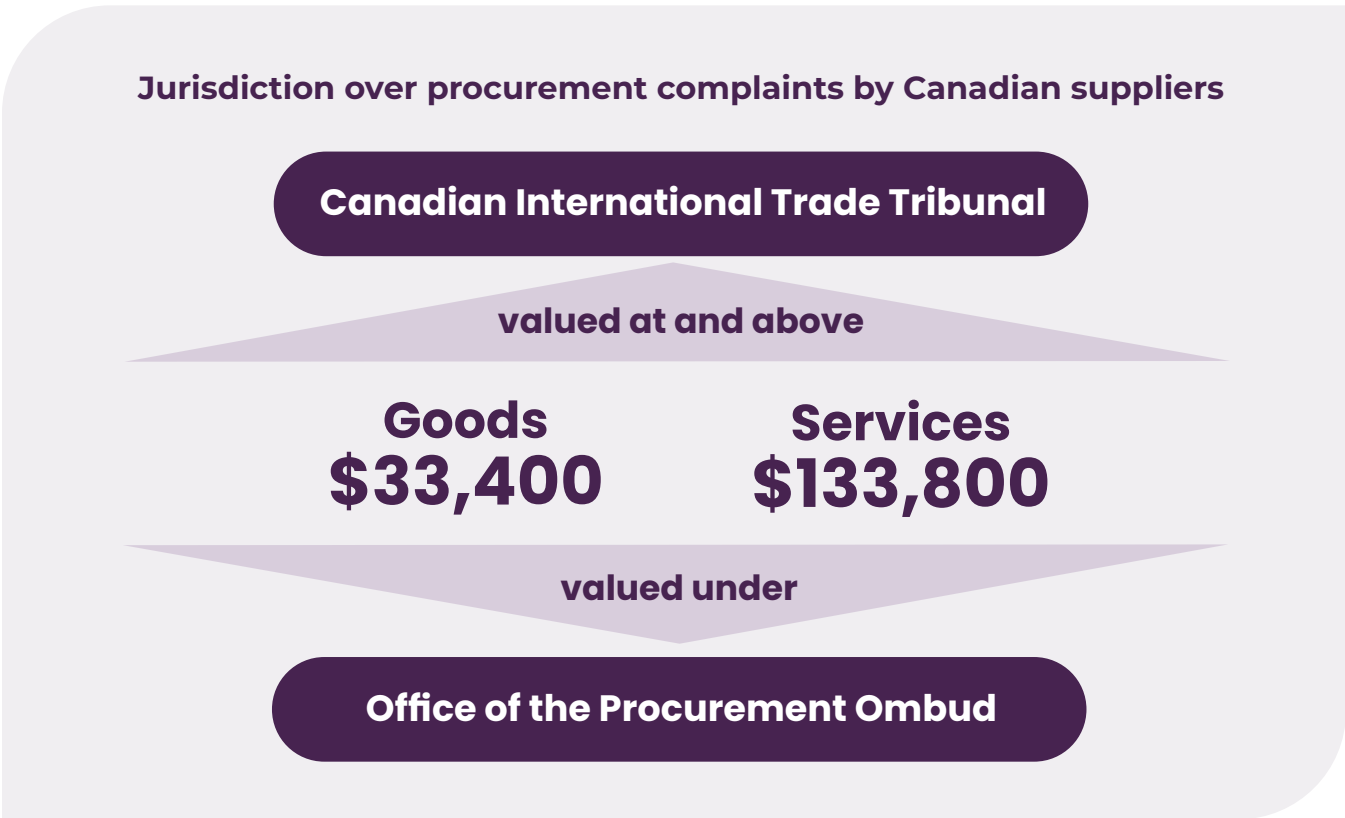
- 1. Acceptance stage** – Within five working days of receipt of a properly documented complaint, the Tribunal determines whether the complaint was filed within statutory deadlines, whether it concerns a procurement process subject to the Tribunal's jurisdiction, and whether the complaint discloses a 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 the 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. If a complaint is valid, the Tribunal will recommend an appropriate remedy (for example, that a new solicitation be issued, the bids be re-evaluated or the contract be terminated).
- 3. Compensation stage** – If a complaint is valid and the Tribunal recommends compensation (i.e., a monetary award), the Tribunal 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 compensation.

Overview of the procurement complaint process



Relationship between the Tribunal and the Office of the Procurement Ombud

Since October 1, 2020, the Office of the Procurement Ombud (OPO) and the Tribunal have worked under a Memorandum of Understanding (MOU). The MOU aims to ease potential suppliers' access to the complaint review system 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:



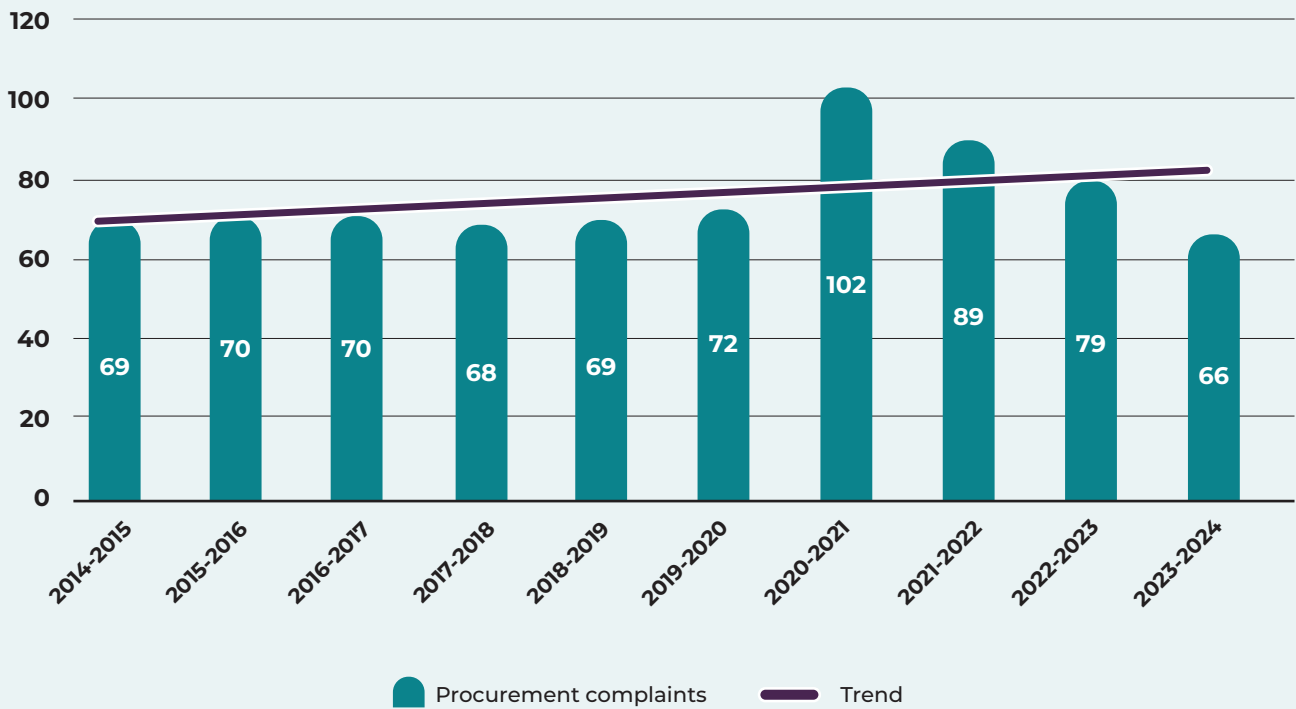
The Tribunal has exclusive jurisdiction over complaints by *foreign suppliers* about government procurement processes under applicable trade agreements. When filing a complaint with either OPO or the Tribunal, complainants are given the option to share their contact information and the basic nature of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

Officials from OPO and the Tribunal and its secretariat have continued to meet in 2023-24 to discuss each organization's jurisdiction and how to ensure that parties have better access to justice.

Historical trend: Procurement complaints received

The Tribunal's caseload for its procurement review mandate remains relatively consistent with historical trends for the last ten years.

Procurement complaints received – 2014-24



Procurement review activities in 2023-24

Number of procurement cases (acceptance and inquiry stages) during the fiscal year

| | |
|--|-----------|
| Carried over from previous fiscal year | 6 |
| Received during this fiscal year | 66 |
| Total | 72 |
| Disposed during this fiscal year | 65 |
| Outstanding at the end of fiscal year | 7 |

A) Complaints not accepted for inquiry⁴

| | |
|---|----|
| Total decisions issued | 38 |
| Of which: | |
| Premature/late filing | 9 |
| Lack of jurisdiction/not a potential supplier/not a designated contract | 11 |
| No reasonable indication of a breach | 18 |
| Withdrawn/abandoned | 5 |

B) Complaints accepted for inquiry

| | |
|------------------------|----|
| Total decisions issued | 22 |
| Of which: | |
| Ceased | 10 |
| Not valid/dismissed | 7 |
| Valid or valid in part | 5 |

4. 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 time frame set in legislation, or they have failed to demonstrate a reasonable indication of a breach of the trade agreements.

Complaints received – self-represented parties

Of note, this year saw a continuation in a growing trend experienced by the Tribunal. Of the 66 complaints received this year, 51 were filed by self-represented parties. In that regard, to support such parties, the Tribunal's website includes a set of guidelines describing the Tribunal's procurement inquiry mandate and procedures. Potential complainants will also find on the Tribunal's website a procurement complaint form, in multiple formats, with a comprehensive set of instructions that they can rely on to present their case to the Tribunal.

Compensation

Where the Tribunal determines that a procurement complaint is valid, it may recommend any remedy that it considers appropriate, including payment

of compensation to the complainant. In cases where the Tribunal does not specify the amount of compensation to be paid, the Tribunal instructs the complainant and the government institution to negotiate that amount.

When the parties are unable to reach an agreement, the Tribunal receives submissions from the parties and establishes the final amount of compensation to be paid. The Tribunal issued one recommendation regarding compensation during this fiscal year in *PricewaterhouseCoopers LLP v. Immigration and Refugee Board of Canada* (PR-2020-035).

Number of procurement cases (compensation stage) during fiscal year

| | |
|---|----------|
| Carried over from previous fiscal year | 2 |
| Initiated during this fiscal year | 2 |
| Total | 4 |
| Recommendation issued during this fiscal year | 1 |
| Ongoing at the end of fiscal year | 3 |

Sample of noteworthy decisions under the procurement review mandate

Peer Ledger Inc. (PR-2023-011)

The Royal Canadian Mint sought to procure a product for use in tracking the origin and transactional history of various gold products, including bullion. The system would enable the Mint to demonstrate that gold refined by the Mint is responsibly sourced. Peer Ledger submitted a bid in response to the Mint's tender but was not awarded a contract. Peer Ledger filed a complaint with the Tribunal claiming that the Mint did not fairly evaluate Peer Ledger's bid.

Having regard to the terms of the *Canadian International Trade Tribunal Act* and the Canadian Free Trade Agreement (CFTA), the Tribunal's jurisdiction is limited to the procurement of goods and services for "governmental purposes". In addressing the characteristics of a procurement for "governmental purposes", the CFTA operates to exclude goods and services procured for commercial sale or resale, or for use in the production or supply of a good or service for commercial sale or resale. The Mint asserted that it was procuring the software for the commercial aspect of its activities and not for a "governmental purpose".

The Tribunal reviewed the Mint's enabling statute, the *Royal Canadian Mint Act* (RCM Act), to determine the scope of the Mint's objectives and purpose. The Tribunal found that the procurement was for a "governmental purpose" because the Mint was procuring goods and services to carry out activities specifically authorized by Parliament in the RCM Act, including the melting, assay and refining of gold, silver and other metals and the secure storage and shipment of coins, gold, silver and other metals. However, the RCM Act also authorizes the Mint to engage in commercial activities for profit. In this case, it was procuring the software to form part of the Mint's commercial product offering to third parties and was intended to be associated with the bullion products sold by the Mint for its own profit.

The Tribunal concluded that, although the procurement was for a "governmental purpose", it fell within the scope of the exclusion for commercial sale or resale define by article 504(2)(b) of the CFTA. Accordingly, the Tribunal found that it lacked jurisdiction and ceased its inquiry.

Pomerleau Inc. (PR-2022-073) and EllisDon Corporation (PR-2023-010)

Public Services and Procurement Canada (PSPC) mishandled an electronic bid bond (e-bond), which led to two separate complaints brought before the Tribunal. The complaints were about an invitation to tender (ITT) that PSPC issued to improve a building in Charlottetown, Prince Edward Island. EllisDon and Pomerleau submitted bids in response to the ITT with the required e-bonds.

A PSPC employee accidentally changed Pomerleau's e-bond, which invalidated its data. PSPC therefore could not verify the e-bond and disqualified Pomerleau's bid. PSPC awarded the contract to EllisDon. Pomerleau objected immediately and informed PSPC of the error. PSPC did not acknowledge the error, even though it had all necessary information at its disposal to determine that it had made a mistake. Pomerleau then filed a complaint with the Tribunal.

After the Tribunal decided to look into Pomerleau's complaint, and 10 weeks after Pomerleau's initial objection to PSPC, Pomerleau told the Tribunal that it had reached an agreement with PSPC. Because PSPC would award Pomerleau the contract, it withdrew its complaint. PSPC cancelled its contract with EllisDon.

EllisDon then filed a complaint with the Tribunal, arguing that PSPC did not properly evaluate Pomerleau's bid and that it took too long to correct its error. EllisDon claims that this caused it harm.

The Tribunal found that PSPC breached the trade agreements by not properly evaluating the bids. The Tribunal also found that PSPC mishandled Pomerleau's e-bond, wrongly awarded the contract to EllisDon and negligently provided false information to potential suppliers. It also took months to fix the original error. As a remedy, the Tribunal recommended that PSPC compensate EllisDon for damages for lost opportunity, if any. PSPC has appealed the Tribunal's decision to the Federal Court of Appeal.

Chantier Davie Canada Inc. and Wärtsilä Canada Inc. (PR-2023-006)

The Tribunal looked into a complaint that Chantier Davie Canada Inc. and Wärtsilä Canada Inc. filed about a procurement that PSPC conducted for the Department of Fisheries and Oceans (DFO). The DFO required certain work to be done on the Canadian Coast Guard ship *Terry Fox*, including the replacement of engines.

Chantier Davie and Wärtsilä claimed that PSPC improperly kept a contract that it had awarded to Heddle Marine Service Inc. even after the Tribunal had recommended a re-evaluation of bids as a remedy in PR-2022-053, a previous case. The Tribunal found that the complaint was valid in part because PSPC chose to keep the contract it had awarded to Heddle despite strong evidence demonstrating that its bid did not meet a mandatory requirement. As a result, the Tribunal recommended that PSPC compensate Chantier Davie and Wärtsilä for the potential profit they lost.

Chantier Davie and Wärtsilä also claimed that PSPC did not fulfill its debriefing obligations, which required that it explain to them why they did not win the contract. While the Tribunal did not need to decide on that issue, it still commented on the need for transparency in the context of debriefing obligations. The Tribunal noted that the Canadian Free Trade Agreement requires that government institutions conduct procurement processes openly and transparently. Considering this requirement, the Tribunal invited PSPC to review how it can meet those obligations in a better way through meaningful debriefings to losing bidders.



CUSTOMS AND EXCISE APPEALS

The Tribunal hears and decides 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* (AP)

Appeals filed under the *Customs Act* relate to a range of issues:

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

There were 26 appeals filed under the *Customs Act* in 2023-24.

2. Appeals filed under the *Special Import Measures Act* (EA)

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

- » whether certain goods fall within the scope of trade remedy measures; and
- » whether the CBSA properly calculated the margin of dumping or amount of subsidy for certain imports.

Eight appeals were filed under SIMA in 2023-24.

3. Appeals filed under the *Excise Tax Act* (AP)

Appeals filed under the *Excise Tax Act* relate to an assessment or a determination of excise tax. One appeal was filed under this act in 2023-24.

4. Extensions of time (EP)

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.

There were two requests for extensions of time filed before the Tribunal in 2023-24.

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 35 appeals. Seventy-nine appeal cases were outstanding at the end of the fiscal year. Of that number, 36 were in abeyance at the request of the parties, often because parties were attempting to negotiate a settlement or were awaiting the outcome of another related appeal before the Tribunal. The remaining 43 matters were all progressing.

Appeals activity in 2023-24

| | 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, 2024) | |
|---|---|-------------------------------|-------|------------------------|--|------------------------------------|----|
| Customs Act (AP) | 68 | 26 | 94 | 23 | 36 | 35 | |
| Of which: | | | | | | | |
| In abeyance | 31 | »» | | | | | |
| Decision pending | 11 | | | | | | 7 |
| Scheduled | 24 | | | | | | 16 |
| To be scheduled | 2 | | | | | | 12 |
| | | | | | | 0 | |
| Special Import Measures Act (EA) | 11 | 8 | 19 | 2 | 2 | 15 | |
| Of which: | | | | | | | |
| In abeyance | 5 | »» | | | | | |
| Decision pending | 6 | | | | | | 7 |
| Scheduled | 0 | | | | | | 5 |
| To be scheduled | 0 | | | | | | 3 |
| | | | | | | 0 | |
| Excise Tax Act | 0 | 1 | 1 | 0 | 0 | 1 | |
| Extension of time | 2 | 2 | 4 | 4 | 0 | 0 | |

Sample of noteworthy decisions under the customs and excise appeals mandate

Value for duty

The Tribunal issued three decisions this fiscal year under the *Customs Act* about the value for duty of imported goods. The value for duty is the base figure on which the customs duties and taxes on imported goods are calculated. The *Customs Act* and its regulations set out a detailed series of technical rules for determining the value for duty of imported goods. The highlighted decisions considered different legal questions in applying these rules to the facts of the importations at issue, in the context of a variety of complex cross-border business transactions, including within groups of companies.

In *Bestseller Wholesale Canada Inc.* (AP-2020-015) and *H&M Hennes & Mauritz GBC AB* (AP-2022-007), the value for duty of the imported goods was determined using the transaction value method of valuation. This method applies if there is a sale for export to Canada, to a purchaser in Canada, and requires determining the price paid or payable for the goods, following the *Customs Act* and the *Valuation for Duty Regulations*.

In ***Bestseller Wholesale Canada Inc.***, the Tribunal had to identify the sale for export to Canada for customs valuation purposes and determine whether various payments the purchaser made to its parent company must be included or added to the price paid or payable of the imported goods. The Tribunal allowed this appeal in part. Bestseller Canada argued that it purchased the imported goods from unrelated foreign manufacturers, whereas the Canada Border Services Agency (CBSA) determined that the true vendor of the goods was Bestseller Canada's parent company, Bestseller A/S. The Tribunal determined that Bestseller Canada had purchased the goods in issue directly from the unrelated foreign manufacturers and that, since

Bestseller A/S never owned the goods, it could not have been the vendor. The Tribunal further found that payments that Bestseller Canada made to Bestseller A/S for the use of an ordering system and payments that Bestseller Canada made to Bestseller A/S that were referred to as buying commissions could not be added to the price paid or payable under the *Customs Act* because they were not paid to or for the vendors' benefit. However, the Tribunal found that fees that Bestseller Canada paid to Bestseller A/S for designing the goods were to be added to the price paid or payable under the *Customs Act*.

In ***H&M Hennes & Mauritz GBC AB***, the Tribunal examined whether the appellant (H&M Sweden), a Swedish company, qualified as a "purchaser in Canada" as defined in the *Valuation for Duty Regulations*. This question depended in part



on whether H&M Sweden had entered into an agreement to sell to a “resident” of Canada, namely, H&M Canada. The *Valuation for Duty Regulations* define “resident” as a corporation whose management and control are in Canada. The Tribunal determined that H&M Canada’s management and control were conducted outside Canada by its only shareholder, which was based in the Netherlands. This shareholder was under the management and control of H&M Sweden’s corporate head office in Sweden. Therefore, since H&M Canada did not qualify as a “resident” of Canada, H&M Sweden could not have entered into an agreement to sell to a resident of Canada. As the Tribunal determined that H&M Sweden qualified as a purchaser in Canada, the Tribunal allowed the appeal.

Centric Brands (AP-2021-004) was about the deductive value method of appraisal, which is an alternative method of appraisal that may apply when the transaction value method does not apply. The deductive value method

estimates the value of the goods at the time they were imported by deducting from their selling price after importation certain costs incurred after importation, as well as a profit amount in connection with sales in Canada. The main issue before the Tribunal was whether, in determining the deductive value of the goods, certain profits could be deducted from the unit price of the goods as profit “in connection with sales in Canada”. Centric Brands (Centric), the appellant, was a U.S. corporation that imported goods and then sold them to Costco Canada, a Canadian customer. Centric sent the invoices for these sales in Canada to Costco USA, Costco Canada’s U.S. parent. Costco USA paid Centric in U.S. dollars, and Centric accounted for these transactions, and their related profits were taxable in the U.S. The CBSA argued that Centric’s profits on these sales to Costco Canada could not be deducted when determining the deductive value of the goods. It argued that these profits were “foreign profit” because they were earned, invoiced, accounted for and paid for outside Canada. The Tribunal determined that such profits do not become nondeductible because they are invoiced and accounted for outside Canada. However, the Tribunal also rejected Centric’s argument that *any* connection between sales in Canada and profits recorded outside Canada necessarily allows all of those profits to be deducted. The Tribunal found that at least a portion of Centric’s profit was connected to sales in Canada, as required by the *Customs Act*. It allowed the appeal and directed the CBSA to reappraise the value for duty of the goods in a manner consistent with the Tribunal’s decision.

Appeals of value for duty decisions are generally among the most complex cases coming before the Tribunal, and generally require a much greater amount of analysis by members of the Tribunal and its secretariat. This continues to have an impact on the ability of the Tribunal to maintain its service standard with respect to the timing of issuance of its appeals mandate decisions.



Hawthorne Canada Ltd. and SLS Runout Holdings ULC (AP-2019-023)

This appeal was the lead case of a number of cases awaiting a Tribunal decision and involving a large number of similar goods. The first issue in the appeal concerned the tariff classification of 243 models of agricultural and horticultural products used in greenhouses or grow tents. During the protracted proceedings, the parties agreed on the classification of 239 of these models. This left the Tribunal with the task of classifying three models of mechanical timers and one lamp and reflector kit.

The second issue was whether 217 of the 243 models of the agricultural and horticultural products could benefit from duty-free treatment under tariff item 9903.00.00 as articles that enter into the cost of manufacture or repair of certain agricultural or horticultural machines. In this case, the Tribunal determined that the agricultural or horticultural machines specified under tariff item 9903.00.00 had to be for commercial use. These appellants didn't provide sufficient evidence to show that 207 of the models actually entered into the cost of manufacture or repair of such machines. The Tribunal allowed the appeal for the remaining 10 models, as the evidence showed that they were specifically designed for commercial growing operations or integrated greenhouse systems.

This case is illustrative of the broad scope of tariff classification issues the Tribunal may have to consider in a single appeal. These types of appeals make it increasingly difficult for the Tribunal to maintain its ability to issue these decisions within a reasonable timeline following hearings.

Access to justice

Every year, the Tribunal sees multiple appeals filed by individuals who import goods and have difficulty understanding why they must pay duties and taxes. They also question why they can't import certain knives and other similar devices, even though they may be sold in retail stores in Canada. These types of cases illustrate the access to justice challenges these individuals face when attempting to interpret Canadian customs regulations and access the appropriate forum to have their views heard.

For example, in *Loran Thompson* (AP-2022-033), an Indigenous Akwesasne appellant sought remission of duties payable on imported poultry. Akwesasne residents can be exempted from the payment of duties under a special remission order if they meet certain conditions. The CBSA determined that the appellant had to pay duties because the poultry was not brought through the Cornwall border crossing, as the remission order required. The appellant first tried to resolve this issue at the Tax Court of Canada and later at the Federal Court of Canada before filing his appeal with the Tribunal. In the end, the Tribunal found that it did not have jurisdiction to hear an appeal about the application of a remission order. This appeal offered a concrete illustration of how complex it is for individuals to exercise their right to appeal administrative decisions when it is not clear which decision-maker or court has jurisdiction.

In the appeals of *J. Hyde* (AP-2022-038) and *B. Hayward* (AP-2022-040), the appellants asked for a refund of the duties and taxes they had paid on the importation of, respectively, aluminum cans and a motor vehicle. The Tribunal found in both cases that it could not order a refund because the CBSA had properly calculated the amounts owing at the time of importation of the goods and events that took place after their importation did not affect those amounts. These cases show that it can be particularly difficult for self-represented individuals to make arguments on the application of the complex laws that govern the importation of goods and the payment of duties and taxes on those goods. Parties are also often unaware that the Tribunal must apply the law as written and that it does not have the power to grant equitable relief as a result of appellants' personal circumstances.

Filing an appeal with the Tribunal can be an overwhelming task for an individual. The Tribunal recognizes this and therefore tries to facilitate access to justice by being accommodating. The Tribunal's registry, to the extent that it can, provides these individuals with guidance and information on the appeals process.

JUDICIAL REVIEWS AND APPEALS

Judicial or panel reviews of Tribunal decisions

Any person affected by Tribunal findings or orders issued under the *Special Import Measures Act* (SIMA) 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. Any person affected by Tribunal procurement findings and recommendations under the *Canadian International Trade Tribunal Act* can similarly request judicial review by the FCA 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 FCA or, under the *Excise Tax Act*, to the Federal Court.

This year again, a small proportion (7 out of 98 or 7%) of the Tribunal decisions were appealed to a reviewing court.

Judicial reviews and appeals for all mandates

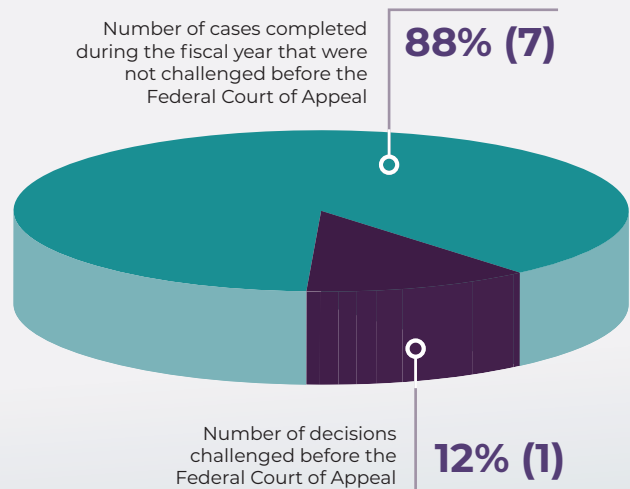
| | Active at beginning of 2023-24 | Filed during 2023-24 | Disposed during 2023-24 | | | Outstanding at the end of 2023-24 |
|--------------|--------------------------------|----------------------|-------------------------|----------|-----------|-----------------------------------|
| | | | Withdrawn | Allowed | Dismissed | |
| SIMA | 1 | 1 | 1 | 0 | 1 | 0 |
| Procurement | 4 | 1 | 1 | 1 | 2 | 1 |
| Appeals | 6 | 5 | 1 | 1 | 4 | 5 |
| Total | 11 | 7 | 3 | 2 | 7 | 6 |

Judicial reviews of *Special Import Measures Act* cases

One application for judicial review was filed before the FCA, on December 18, 2023, regarding the Tribunal's finding in *Certain Wind Towers* (NQ-2023-001). It was withdrawn on December 22, 2023.

The FCA issued its decision in the judicial review, filed in a prior fiscal year, relating to the Tribunal's finding in *Decorative and Other Non-structural Plywood* (NQ-2020-002). The FCA dismissed the application for judicial review, as it was of the view that the Tribunal's finding was reasonable.

Judicial reviews of *Special Import Measures Act* cases completed this year



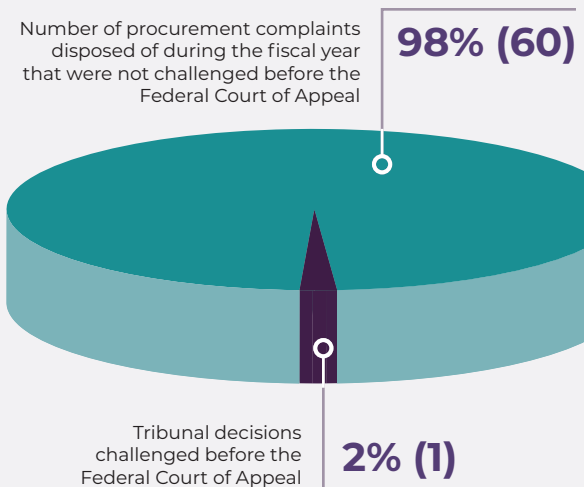
Judicial reviews of procurement complaints

There was one application for judicial review of a decision by the Tribunal in a procurement complaint this fiscal year.

During this fiscal year, four applications for judicial review of Tribunal decisions filed in previous fiscal years came to a close. The FCA allowed the application for judicial review of the Tribunal's decision in *Heiltsuk Horizon Maritime Services Ltd./Horizon Maritime Services Ltd. v. Department of Public Works and Government Services* (PR-2020-068). The FCA set aside the Tribunal's decision and declared the complaint valid. As a result, the Tribunal re-opened its inquiry to recommend an appropriate remedy for the complainant. That process was ongoing at the end of the fiscal year.

The FCA also dismissed the applications for judicial review filed by complainants relating to the Tribunal's decisions in *Terra Reproductions Inc.* (PR-2022-069) (dismissed on the merits) and *Sunny Jaura d.b.a. Jaura Enterprises* (PR-2018-058) (dismissed for delay following a status review). The application for judicial review of the Tribunal's decision in

Judicial reviews of procurement decisions issued during the year



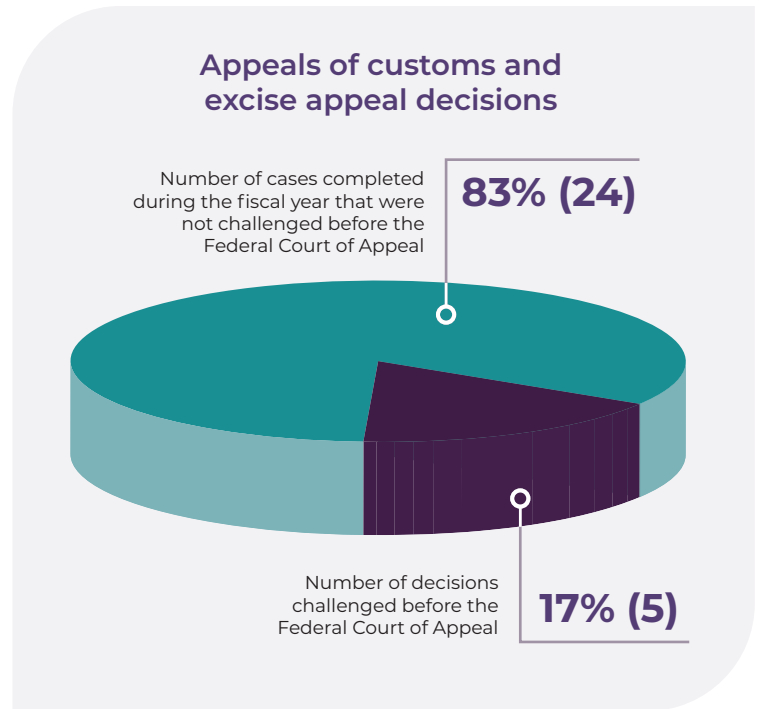
Chantier Davie Canada Inc. and Wärtsilä Canada Inc. v. Department of Public Works and Government Services (PR-2022-053) was discontinued by the applicant, Heddle Marine Service Inc.

Appeals of Customs Act and Special Import Measures Act appeal decisions

Five of the Tribunal's decisions under this mandate were challenged in the FCA this fiscal year.

During this fiscal year, the FCA dismissed appeals, filed in previous years, of Tribunal decisions in *Canadian Tire Corporation Limited v. President of the Canada Border Services Agency* (AP-2020-020) and *Pier 1 Imports (U.S.), Inc. v. President of the Canada Border Services Agency* (AP-2019-047).

The FCA also dismissed the appeal of the Tribunal's decision in *Remington Sales Co. d.b.a. Hyundai Heavy Industries (Canada) v. President of the Canada Border Services Agency* (EA-2019-009), but it allowed the cross-appeals of the Tribunal's decisions in that case and in *Hyundai Canada Inc. v. President of the Canada Border Services Agency* (EA-2019-008 and EA-2019-010). The appeal of the Tribunal's decision in *Hyundai Canada Inc.* had been discontinued by the appellant in a prior fiscal year.



| | AP-2021-004 | AP-2020-030 | AP-2019-007 | AP-2022-015 | AP-2022-004 & AP-2022-017 |
|------------------------------------|---|--|----------------|----------------------|----------------------------|
| Appellant | Centric Brands d.b.a. KHQ Investments LLP | Interpro Distributeurs de Viandes inc. | James B. Byrne | Best Buy Canada Ltd. | Medline Canada Corporation |
| Date of Tribunal's decision | May 23, 2023 | June 7, 2023 | July 17, 2023 | November 8, 2023 | January 29, 2024 |
| FCA court status | Withdrawn | Pending | Pending | Pending | Pending |

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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 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 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 the <i>Special Import Measures Act</i> (SIMA) 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. |

ANNEX

Orders and rulings issued in 2023-24

The tables below contain statistics pertaining to orders and rulings on procedural matters issued as part of the Tribunal's proceedings during fiscal year 2023-24. These statistics illustrate the complexity of the cases considered by the Tribunal.

Orders and rulings issued in 2023-24

| | Trade remedy activities | Procurement review activities | Appeals | Total |
|--|-------------------------|-------------------------------|---------|-------|
| Orders | | | | |
| Disclosure orders | 19 | 0 | 0 | 19 |
| Cost award orders | N/A | 5 | N/A | 5 |
| Compensation orders | N/A | 1 | N/A | 1 |
| Production orders | 3 | 0 | 0 | 3 |
| Postponement of award orders | N/A | 8 | N/A | 8 |
| Rescission of postponement of award orders | N/A | 5 | N/A | 5 |
| Directions/administrative rulings | | | | |
| Requests for information | 82 | 0 | 0 | 82 |
| Motions | 0 | 0 | 3 | 3 |
| Subpoenas | 14 | 0 | 0 | 14 |

Other statistics

| Trade remedy activities | | | | | |
|--|---------|---------|---------|---------|---------|
| | 2023-24 | 2022-23 | 2021-22 | 2020-21 | 2019-20 |
| Public hearing days | 16 | 19 | 34 | 6 | 30 |
| File hearings ¹ | 4 | 7 | 18 | 18 | 16 |
| Witnesses | 54 | 73 | 111 | 0 | 109 |
| Participants | 53 | 71 | 204 | 189 | 277 |
| Questionnaire replies | 251 | 251 | 552 | 433 | 608 |
| Pages of official records ² | 178,495 | 210,227 | 287,196 | 324,035 | 201,550 |
| Procurement review activities | | | | | |
| | 2023-24 | 2022-23 | 2021-22 | 2020-21 | 2019-20 |
| Public hearing days | 1 | 0 | 2 | 2 | 0 |
| File hearings ¹ | 55 | 73 | 87 | 77 | 67 |
| Witnesses | 0 | 0 | 1 | 0 | 0 |
| Participants | 88 | 111 | 158 | 153 | 107 |
| Questionnaire replies | 0 | 0 | N/A | 0 | 0 |
| Pages of official records ² | 55,416 | 73,473 | 86,255 | 92,501 | 55,693 |
| Appeals | | | | | |
| | 2023-24 | 2022-23 | 2021-22 | 2020-21 | 2019-20 |
| Public hearing days | 25 | 15 | 16 | 9 | 32 |
| File hearings ¹ | 14 | 10 | 6 | 5 | 16 |
| Witnesses | 34 | 14 | 19 | 13 | 58 |
| Participants | 133 | 86 | 86 | 76 | 160 |
| Questionnaire replies | 0 | 0 | N/A | 0 | 0 |
| Pages of official records ² | 48,376 | 54,263 | 27,193 | 15,596 | 57,710 |
| Total | | | | | |
| | 2023-24 | 2022-23 | 2021-22 | 2020-21 | 2019-20 |
| Public hearing days | 42 | 34 | 52 | 17 | 62 |
| File hearings ¹ | 73 | 90 | 111 | 100 | 99 |
| Witnesses | 88 | 87 | 131 | 13 | 167 |
| Participants | 274 | 267 | 448 | 418 | 544 |
| Questionnaire replies | 251 | 251 | 552 | 433 | 608 |
| Pages of official records ² | 282,287 | 337,963 | 400,644 | 432,132 | 314,953 |

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



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