Canadian International Trade Tribunal | Tribunal canadien du commerce extérieur

ANNUAL REPORT

FOR THE FISCAL YEAR ENDING MARCH 31, 2020

CANADIAN INTERNATIONAL TRADE TRIBUNAL

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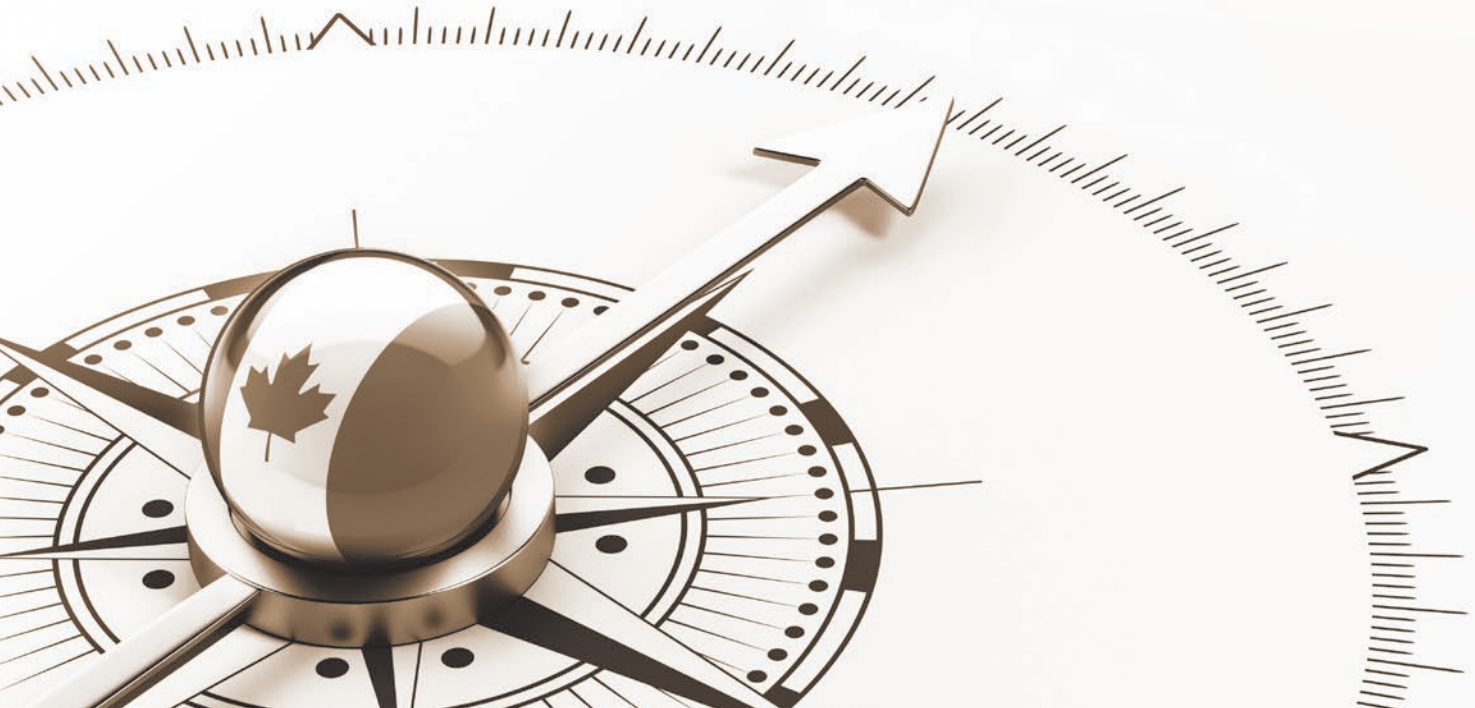
The CITT provides Canadian and international businesses with access to fair, transparent and timely processes and adjudication.



MESSAGE FROM THE CHAIRPERSON

June 23, 2020

It is my pleasure to present the Annual Report for the Canadian International Trade Tribunal for the period of April 1, 2019, to March 31, 2020. The first week of that period saw the release of the Tribunal's landmark Safeguard Inquiry Report regarding Certain Steel Goods.

The last two weeks of the period were marked by the beginning of the lockdown due to the COVID-19 pandemic. The Tribunal had to adapt rapidly to this unprecedented environment. The Tribunal's records are entirely electronic since the implementation of the new *CITT Rules* in 2018. We are now a paperless tribunal. At the outset of the lockdown, the Tribunal also expanded its pilot project for a registry system that allows the parties to a proceeding to access and retrieve documents. These new systems, implemented over the past two years, enabled the Tribunal to continue its operations almost seamlessly. However, this would not have been possible without the dedication of the staff of the Tribunal's Secretariat, who had to adapt to the new reality of working remotely.

The Tribunal's decisions have a significant impact on the economic activity of our country. The trade remedy measures in place in Canada affect approximately $2 billion in imports and $10 billion in domestic shipments. 34,000 jobs in the domestic industries are directly benefiting from these measures. The value of the federal procurements reviewed by the Tribunal varies significantly from year to year. While this year it was around $550 million, that amount was in excess of $15 billion the year before. The CITT also hears appeals from decisions of the CBSA under the *Customs Act* and plays an important role in the administration of the *Customs Tariff*.

These numbers illustrate the important role played by the CITT as an independent institution. Parliament has entrusted the Tribunal with the responsibility of adjudicating in substantial disputes between the Government of Canada and Canadians as well as businesses large and small. The vast majority of the decisions made by the Tribunal last year involved such disputes. Parties who come before the CITT can expect that their case will be heard in a fair and transparent manner by independent adjudicators who are part of an independent quasi-judicial tribunal. The administrative changes introduced by the Government in 2014 to have a separate organization provide support services for the Tribunal did not alter the Tribunal's role as an independent institution.

The CITT is committed to providing easy access to the parties that come before it. This is one of the main characteristics of administrative justice. In many instances, the complainants in procurement matters are self-represented. Most of the procurement cases are resolved without the need for an oral hearing. While protecting procedural fairness, the Tribunal's Rules provide, across all its mandates, for processes that are simple and easy to access.

Parties that come before the Tribunal can also expect a timely resolution of their matter. In most trade remedy cases and in procurement matters, the Tribunal is bound by statutory deadlines. In matters that are not subject to those deadlines, the Tribunal has set internal standards, and parties can expect to receive a decision within 120 days after all the evidence has been provided to the Tribunal. A party to an appeal under the *Customs Act* can generally expect to have its case heard within six to nine months.

As an investigative agency in trade remedy cases, the CITT has a global reputation for excellence. The staff of the Tribunal's Secretariat and the Members of the CITT take pride in keeping this reputation intact and ensuring that we continue to be a centre of excellence. Across all our mandates, we strive to improve our processes and procedures to ensure that they are the best in class. The Members of the Tribunal are dedicated to rendering fair, impartial and transparent decisions that uphold the rule-based international trade system and the rule of law.

While the Tribunal is an independent institution, it is also accountable. The annual report plays a key role in its accountability to Parliament and to Canadians. The pages that follow provide details of the Tribunal's activities over the past year. You will find how we fulfilled our mandates during that period when we marked the CITT's 30th anniversary.

Finally, on behalf of the Tribunal, I want to thank the staff of the Tribunal's Secretariat for its professionalism and dedication. I also want to thank the members of the Tribunal's Advisory Committee for representing our stakeholders and providing us with an invaluable feedback which allows us to keep improving the way in which we serve Canadians.

Sincerely,

Jean Bédard, Q.C.

Chairperson
Canadian International Trade Tribunal

TABLE OF CONTENTS

CHAPTER 1
SUMMARY

CHAPTER 1 – SUMMARY

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

HISTORY OF THE TRIBUNAL

The Tribunal began operations on December 31, 1988, following the merger of the Tariff Board, the Canadian Import Tribunal and the Textile and Clothing Board. However, its history goes back to the time of Confederation and the Board of Customs, whose appellate mandate was transferred to the Tariff Board in the 1930s. In 1994, the Tribunal absorbed the Procurement Review Board. In 2014, the staff and budget of the Tribunal were transferred to the Administrative Tribunals Support Service of Canada (ATSSC). Its staff is now part of the CITT Secretariat of the ATSSC.

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

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

1970s The Tribunal's third predecessor, the Textile and Clothing Board, was formed in the early 1970s and inquired into safeguard complaints by the Canadian textile and apparel industries.

1994 The Tribunal absorbed the Procurement Review Board, extending the Tribunal's mandate to include inquiries into whether federal procurement processes have been carried out in accordance with Canada's domestic and international trade obligations.

TRADE REMEDY INQUIRIES

The Tribunal plays a significant role within Canada's trade remedy system. Under *SIMA* the Tribunal determines whether the dumping and subsidizing of imported goods cause injury or threaten to cause injury to a domestic industry. The Tribunal issued 17 trade remedies decisions and two safeguard exclusion decisions during the fiscal year—compared to 27 the year before. These decisions related primarily to the steel sector, but also concerned products such as unitized wall modules, silicon metal, aluminum extrusions, and nitisinone capsules. All the decisions were issued within the tight statutory deadlines. The report of the safeguard inquiry held during the fiscal year 2018-2019 was released on April 3, 2019.

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

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

PROCUREMENT INQUIRIES

During fiscal year 2019-2020, the Tribunal received 72 complaints pertaining to more than $550 million in federal procurement. The Tribunal issued 62 decisions on whether to accept complaints for injury. The Tribunal also issued 27 final decisions on merit where complaints were accepted for inquiry. Combined, this represented a total of 89 decisions compared to 92 the year before. All procurement review decisions were issued within legislated deadlines.

CUSTOMS AND EXCISE APPEALS

A total of 57 appeals were filed (47 under the *Customs Act* and 10 under *SIMA*) during the reporting period, and two extension of time requests were received. The Tribunal issued 40 appeal decisions and one remand decision under the *Customs Act*. Of these 41 appeal decisions, 39 (95 percent) were made within 120 days of being heard by the Tribunal.

STANDING TEXTILES REFERENCE

Pursuant to a reference from the Minister of Finance dated July 14, 1994, as last amended on October 27, 2005, the Tribunal was directed to investigate requests from domestic producers for tariff relief on imported textile inputs for use in their

manufacturing operations and, in respect of those requests, to make recommendations to the Minister of Finance that would maximize net economic gains to Canada.

No requests for tariff relief have been received by the Tribunal for the past several years. The reference was terminated by the Minister of Finance on February 1, 2020.

CASELOAD

The first table below contains statistics pertaining to the Tribunal's caseload for 2019-2020. The second table contains statistics relating to other case-related activities in 2019-2020. These statistics illustrate the complexity and diversity of the cases considered by the Tribunal.

TRIBUNAL CASELOAD OVERVIEW–2019-2020

	Cases Brought Forward From Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions to Initiate	Decisions Not to Initiate	Total Decisions/ Reports Issued	Cases Withdrawn/ Closed	Cases Outstanding (March 31, 2020)
Trade remedies								
Preliminary injury inquiries	0	2	2	N/A	N/A	2	0	0
Inquiries	1	2	3	N/A	N/A	1	0	2
Requests for public interest inquiries	0	0	0	0	0	0	0	0
Public interest inquiries	0	0	0	0	0	0	0	0
Requests for interim reviews	1	2	3	0	2	0	0	1
Interim reviews	0	0	0	N/A	N/A	0	0	0
Expiries[1]	1	5	6	6	0	6	0	0
Expiry reviews	7	6	13	N/A	N/A	8	0	5
Safeguards	1	2	3	N/A	N/A	3	0	0
Remanded cases	0	1	1	N/A	N/A	0	0	1
TOTAL	**11**	**20**	**31**	**6**	**2**	**20**	**0**	**9**

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

TRIBUNAL CASELOAD OVERVIEW–2019-2020

	Cases Brought Forward From Previous Fiscal Year	Cases Received in Fiscal Year	Total	Decisions to Initiate	Decisions Not to Initiate	Total Decisions/ Reports Issued	Cases Withdrawn/ Closed	Cases Outstanding (March 31, 2020)
Procurement								
Complaints received	3	72	75	26	36	62	6	7
Complaints accepted for inquiry	5	26	31	N/A	N/A	27	0	4
Remanded cases[2]	0	0	0	N/A	N/A	0	N/A	0
TOTAL	**8**	**98**	**106**	**26**	**36**	**89**	**6**	**11**
Appeals								
Extensions of time								
Customs Act	1	2	3	N/A	N/A	3	0	0
Excise Tax Act	0	0	0	N/A	N/A	0	0	0
TOTAL	**1**	**2**	**3**	**N/A**	**N/A**	**3**	**0**	**0**
Appeals								
Customs Act	85	47	132	N/A	N/A	40	34	58
Excise Tax Act	0	0	0	N/A	N/A	0	0	0
Special Import Measures Act	0	10	10	N/A	N/A	0	0	10
Remanded cases	1	0	1	N/A	N/A	1	0	0
TOTAL	**86**	**57**	**143**	**N/A**	**N/A**	**41**	**34**	**68**

2. Where a single remand decision is issued in respect of multiple cases, it is accounted for as a single remanded case.

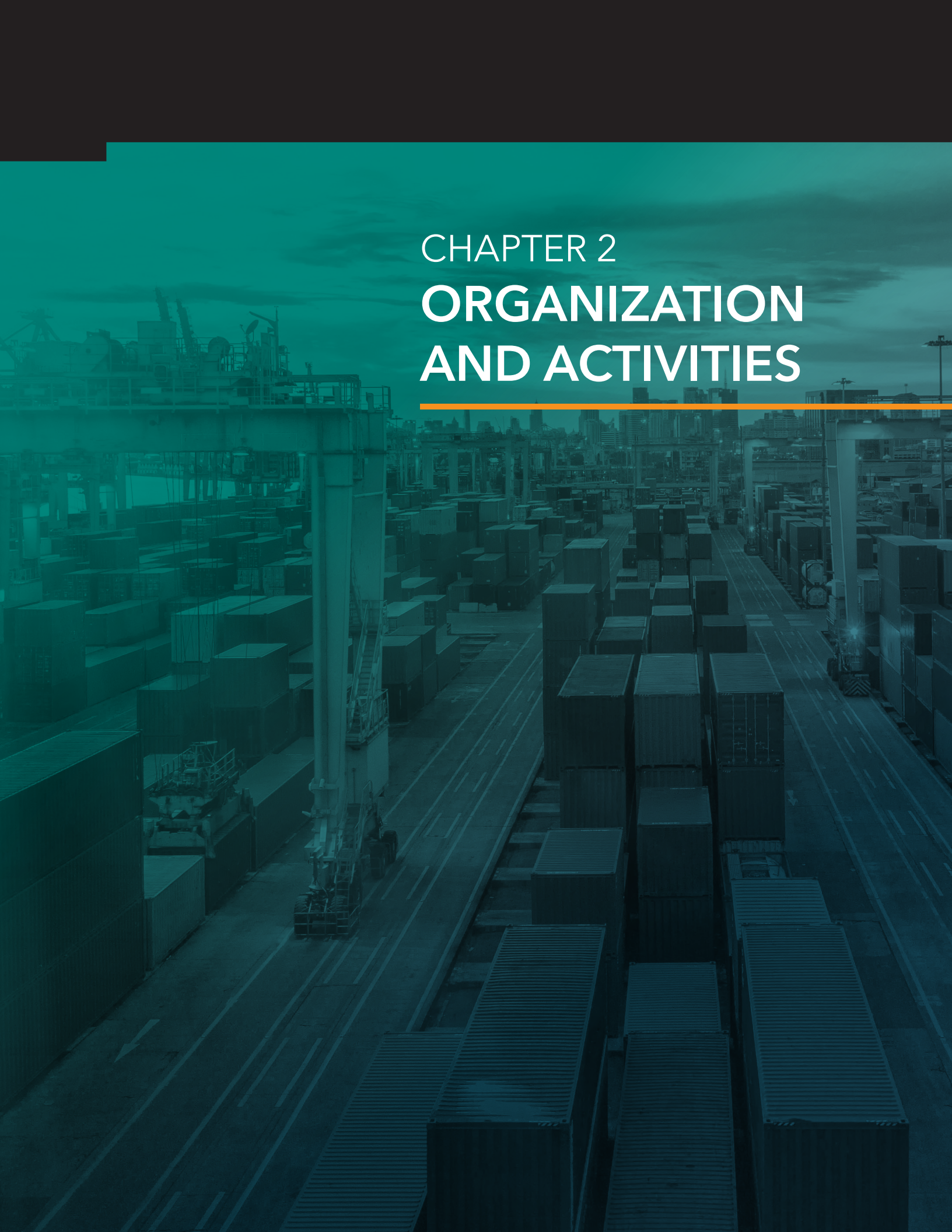
N/A = Not applicable

STATISTICS RELATING TO CASE ACTIVITIES IN 2019-2020

	Trade Remedy Activities	Procurement Review Activities	Appeals	Standing Textile Reference	TOTAL
Orders					
Disclosure orders	27	0	0	0	27
Cost award orders	N/A	5	N/A	N/A	5
Compensation orders	N/A	4	N/A	N/A	4
Production orders	6	1	1	0	8
Postponement of award orders	N/A	3	N/A	N/A	3
Rescission of postponement of award orders	N/A	3	N/A	N/A	3
Directions/administrative rulings					
Requests for information	166	0	0	0	166
Motions	2	5	0	0	7
Subpoenas	12	0	1	0	13
Other statistics					
Public hearing days	30	0	32	0	62
File hearings[1]	16	67	16	0	99
Witnesses	109	0	58	0	167
Participants	277	107	160	0	544
Questionnaire replies	608	0	0	0	608
Pages of official records[2]	201,550	55,693	57,710	0	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



CHAPTER 2

ORGANIZATION AND ACTIVITIES

CHAPTER 2 – ORGANIZATION AND ACTIVITIES

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

HOW THE TRIBUNAL DOES ITS WORK

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

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

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

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

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

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

MEMBERS OF THE TRIBUNAL

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

Mr. Jean Bédard is the Chairperson of the Tribunal. He was appointed to this position on May 3, 2018. Ms. Rose Ann Ritcey is the Vice-Chairperson of the Tribunal. She was appointed to this position on March 4, 2019. The other permanent members of the Tribunal as of March 31, 2020, were Ms. Susan Beaubien, Ms. Cheryl Beckett, Mr. Georges Bujold, Mr. Peter Burn and Mr. Randolph W. Heggart. Mr. Heggart was appointed during the fiscal year. Mr. Serge Fréchette, a former permanent member, was reappointed to a temporary member position and served in that capacity during the year.

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

OUTREACH

The Tribunal's Advisory Committee provides recommendations to enhance the accessibility, fairness and transparency of the Tribunal's rules and procedures. It is made up of a cross-section of legal counsel, business associations and governmental officials. It provided its annual report to the Tribunal on May 30, 2019. The Tribunal responded on August 16, 2019, and commented on the recommendations.

The Tribunal met with the Advisory Committee twice during the year. A regular meeting was held in June with all stakeholders and a workshop took place in October to discuss technical and legal points in trade remedies and procurement. The Tribunal will continue working with the Advisory Committee to seek its stakeholders' input in its ongoing efforts to enhance fairness and accessibility for all parties, and to reduce costs for the parties appearing before the Tribunal, especially small- and medium-sized businesses.

The Chairperson spoke at the Seoul International Forum on Trade Remedies in May 2019 and moderated a panel at the annual World Customs Law Meeting in September 2019. He also participated in a meeting of over 30 heads of investigative authorities held at the World Trade Organization in November. On those occasions, and in other forums, the Chairperson maintained contact with counterparts to share and enhance the Tribunal's best practices and procedures.

CHAPTER 3

MANDATES

CHAPTER 3 – MANDATES

The Tribunal is mandated to act within five key areas:

Anti-dumping and Subsidizing Injury Inquiries

To inquire into and decide whether dumped and/or subsidized imports have caused, or are threatening to cause, injury to a domestic industry.

Procurement Inquiries

To inquire into complaints by potential suppliers concerning procurement by the federal government and decide whether the federal government breached its obligations under certain trade agreements to which Canada is party.

Customs and Excise Appeals

To hear and decide appeals of decisions of the Canada Border Services Agency (CBSA) made under the *Customs Act* and the *Special Import Measures Act (SIMA)* and of the Minister of National Revenue made under the *Excise Tax Act*.

Economic and Tariff Inquiries

To inquire into and provide advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance.

Safeguard Inquiries

To inquire into complaints that increased imports are causing, or threatening to cause, serious injury to domestic producers and, as directed, make recommendations to the Government on an appropriate remedy.

MANDATE:
DUMPING AND SUBSIDIZING INQUIRIES

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

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

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

PRELIMINARY INJURY INQUIRIES

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

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

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

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

PRELIMINARY INJURY INQUIRY ACTIVITIES

The Tribunal completed two preliminary injury inquiries in the fiscal year.

FINAL INJURY INQUIRIES

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

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

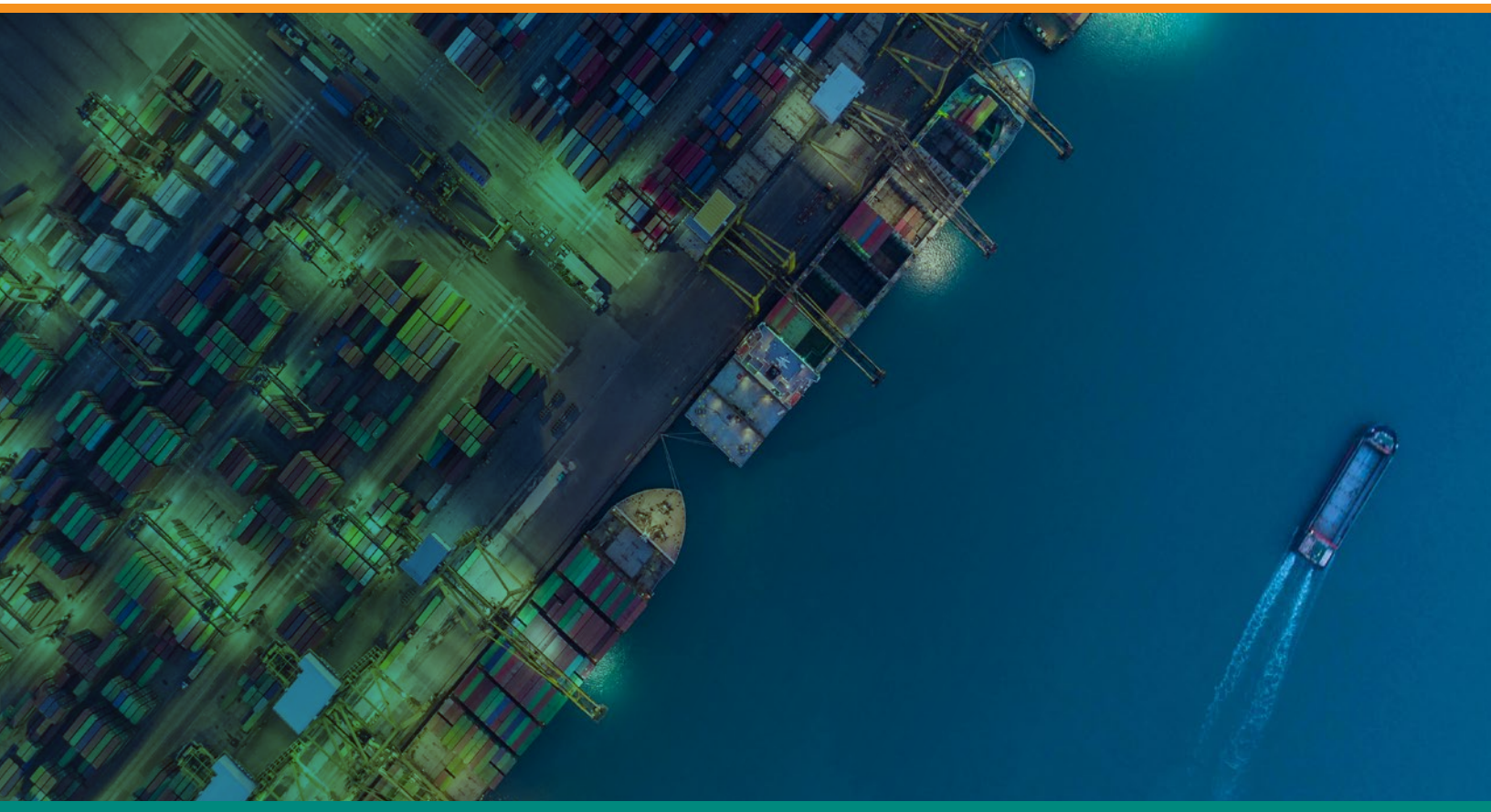
In conducting final injury inquiries, the Tribunal requests information from interested parties, receives representations and holds public hearings. Questionnaires are sent to Canadian producers, importers, purchasers, foreign producers and exporters. Primarily on the basis of questionnaire responses,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

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

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

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

The Tribunal holds a public hearing about 90 days after the commencement of the inquiry, i.e. at or around the time when the CBSA has made a final determination of dumping or subsidizing. At the public hearing, Canadian producers attempt to persuade the Tribunal that the dumping or subsidizing of goods has caused injury or retardation or is threatening to cause injury to a domestic industry. Importers, foreign producers and exporters may challenge the Canadian producers' case.



After cross-examination by parties and questioning by the Tribunal, each side has an opportunity to respond to the other's case and to summarize its own. In some inquiries, the Tribunal calls witnesses who are knowledgeable of the industry and market in question. Parties may also seek the exclusion of certain goods from the scope of a Tribunal finding of injury or retardation or threat of injury.

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

FINAL INJURY INQUIRY ACTIVITIES

The Tribunal completed one final injury inquiry in the fiscal year.

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

There was one final injury inquiry in progress at the end of the fiscal year concerning corrosion-resistant steel sheet from Turkey, the United Arab Emirates and Vietnam. Another final injury inquiry, regarding sucker rods from Argentina, Brazil and Mexico, remains suspended pursuant to section 50 of the *Special Import Measures Act* as a result of the acceptance by the CBSA of the undertakings offered by the exporting parties.

PUBLIC INTEREST INQUIRIES

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

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

INTERIM REVIEWS

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

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

INTERIM REVIEW ACTIVITIES

The Tribunal determined, in respect to two requests for interim review, that a review was not warranted. One request for an interim review remained under consideration at the end of the fiscal year.

EXPIRIES

Subsection 76.03(1) of *SIMA* provides that a finding or order expires after five years, unless an expiry review has been initiated. Not later than two months before the expiry date of the finding or order, the Tribunal publishes a notice of expiry in the *Canada Gazette*. The notice invites persons and governments to submit their views on whether the order or finding should be reviewed and gives direction on the issues that should be addressed in the submissions. If the Tribunal determines that an expiry review is not warranted, it issues an order with reasons for its decision. Otherwise, it initiates an expiry review.

EXPIRY ACTIVITIES

The Tribunal completed six expiries during the fiscal year and there was no expiry in progress at the end of the fiscal year.

EXPIRY REVIEWS

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

The purpose of an expiry review is to determine whether the imposition of anti-dumping or countervailing duties remain necessary. There are two phases in an expiry review. The first phase is the investigation by the CBSA to determine whether there is a likelihood of resumed or continued dumping or subsidizing if the finding or order expires. If the CBSA determines that such likelihood exists with respect to any of the goods, the second phase is the Tribunal's inquiry into the likelihood of injury or retardation arising from the resumption or continuation of the dumping or subsidizing. If the CBSA determines that there is no likelihood of resumed dumping or subsidizing for any of the goods, the Tribunal does not consider those goods in its subsequent determination of the likelihood of injury and issues an order rescinding the order or finding with respect to those goods.

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

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

EXPIRY REVIEW ACTIVITIES

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

MANDATE: PROCUREMENT

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

The relevant provisions of the *Canadian International Trade Tribunal Procurement Inquiry Regulations* allow a complainant to first make an attempt to resolve the issue with the government institution responsible for the procurement before filing a complaint.

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

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

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

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

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

SUMMARY OF PROCUREMENT ACTIVITIES

During the fiscal year, the Tribunal issued 62 decisions on whether to accept complaints for inquiry and 27 final decisions on complaints that were accepted for inquiry, for a total of 89 decisions. Eleven cases were still in progress at the end of the fiscal year, seven of which were still under consideration for being accepted for inquiry.

MANDATE:
CUSTOMS AND EXCISE APPEALS

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

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

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

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

HEARINGS

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

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

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

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

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

EXTENSIONS OF TIME

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

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

APPEALS RECEIVED AND HEARD

During the fiscal year, the Tribunal received 57 appeals. Sixty-eight appeal cases were outstanding at the end of the fiscal year. Thirty-six of these appeals were in abeyance at the request of the parties. The Tribunal heard 31 appeals under the *Customs Act*. It issued decisions on 40 appeals and one remand decision under the *Customs Act*.

CHAPTER 4

SAFEGUARD REFERENCE

CHAPTER 4 – SAFEGUARD REFERENCE

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

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

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

The details of this major inquiry were described in the Tribunal's annual report for the fiscal year 2018-2019, during which most of the proceeding took place.

On April 3, 2019, the Tribunal submitted a report to the Governor in Council. The Tribunal found that heavy plate and stainless steel wire from the subject countries (other than goods originating in Korea, Panama, Peru, Colombia and Honduras) were being imported in such increased quantities and under such conditions as to be a principal cause of a threat of serious injury to the domestic industry. The Tribunal therefore recommended a remedy in the form of a tariff rate quota on imports of heavy plate and stainless steel wire from subject countries, other than goods originating in Korea, Panama, Peru, Colombia, Honduras, or countries whose goods are eligible for General Preferential Tarif treatment. The Tribunal's recommendations were implemented by the Government of Canada as final safeguard measures on May 9, 2019. These measures will expire after October 24, 2021.

On May 9, 2019, the Tribunal was further directed by 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 (Exclusions Inquiry Order)*, to conduct inquiries, at specified six-month intervals, regarding exclusion requests concerning certain heavy plate and stainless steel wire which are subject to safeguard measures enacted in the *Order Imposing a Surtax on the Importation of Certain Steel Goods*.

The Tribunal conducted two inquiries in fiscal year 2019-2020 and submitted two reports to the Governor in Council in response to the *Exclusions Inquiry Order*.

The Tribunal issued its first report on July 15, 2019. In that first exclusions inquiry, the Tribunal received exclusion requests from 12 companies. Having found that there was no source of domestic supply or firm and commercially viable plan to produce such goods domestically, in accordance with the directions in the *Exclusions Inquiry Order*, the Tribunal made eight recommendations to the Governor in Council to exclude products from the *Order Imposing a Surtax on the Importation of Certain Steel Goods*. Seven of these recommended exclusions concerned heavy plate in various grades and thicknesses and certain plate for use in the manufacture of oil and gas line pipe. The remaining recommendation was an exclusion for certain copper-coated stainless steel wire.

The Tribunal issued its second exclusions inquiry report on March 13, 2020. Having received one request for a product exclusion for certain shaped stainless steel wire, the Tribunal recommended the exclusion to the Governor in Council.

***The Tribunal conducted two inquiries in fiscal year 2019-2020 and submitted two reports to the Governor in Council in response to the* Exclusions Inquiry Order.**

CHAPTER 5

CASE SUMMARIES AND JUDICIAL REVIEWS

CHAPTER 5 – CASE SUMMARIES AND JUDICIAL REVIEWS

The Tribunal hears well over a hundred cases per fiscal year. Of the cases inquired into by the Tribunal, certain decisions stand out. Brief summaries of a representative sample of these cases are included below. These summaries have been prepared for general information purposes only. For more information on cases and decisions, please visit the Tribunal's website at www.citt-tcce.gc.ca.

SAMPLE OF NOTEWORTHY DECISIONS UNDER THE SIMA MANDATE

Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate – RR-2018-007 and RR-2019-001

Two of the expiry reviews conducted by the Tribunal in the fiscal year concerned findings in respect to imports of certain plate products from specified countries. In Expiry Reviews No. RR-2018-007 and RR-2019-001, the Tribunal concluded that the expiry of each finding would likely result in injury to the domestic industry. In its analysis of the likelihood of injury, the Tribunal considered the impact of the Canadian safeguard measures applicable to certain heavy plate imports, given that the scope of the safeguard measures overlapped, in part, with the scope of the findings in issue. In both expiry reviews, the Tribunal found that the effects of the final safeguard measures on the likely volumes and prices of the dumped goods would be limited for a number of reasons, including the fact that the safeguard measures covered only a subset of the goods subject to the findings in issue and the fact that the safeguard tariff rate quotas were designed to allow a significant volume of goods to which they apply to be imported without attracting any surtax. The Tribunal further stated, in Expiry Review No. RR-2019-001, that safeguard measures and anti-dumping and countervailing measures are different remedies, with different objectives and criteria, that intend to deal with different circumstances. While the purpose of the safeguard inquiry was to determine whether steel goods were being imported in such increased quantities and under such conditions as to be a principal cause of serious injury to domestic producers of like or directly competitive goods, anti-dumping measures, for their part, address material injury caused or threatened by an unfair trade practice, the *dumping* of goods, through their injurious price and volume. The Tribunal considered that these remedies can apply concurrently to the same product from the same origin where the respective requirements for the imposition of each type of measure are met pursuant to the applicable legislation and the WTO *Anti-dumping Agreement*.

In Expiry Review No. RR-2019-001, the Tribunal also dealt with the novel question whether to exclude, from its order continuing the finding, goods produced by an exporter who had been found by the CBSA to have an insignificant margin of dumping at the time of the original dumping investigation. The exporter submitted in the Tribunal's expiry review that it could not remain subject to the finding in light of a 2016 panel report, adopted by the WTO Dispute Settlement Body (DSB), regarding anti-dumping measures on carbon steel welded pipe from Chinese Taipei, that found the *Special Import Measures Act* in force at the time to be inconsistent with the WTO *Anti-dumping Agreement* as it did not enable the CBSA to terminate dumping investigations against exporters with insignificant margins of dumping. The Tribunal determined that it did not have the power to grant an exclusion for this exporter pursuant to the relevant expiry review provision. In its analysis, the Tribunal concluded, *inter alia*, that the amendments made by Parliament in bringing the Act into compliance with the recommendations and rulings of the DSB showed its intent to implement them with respect to new investigations under the amended *Special Import Measures Act*, but to preserve the *status quo* with respect to pre-existing findings and the conduct of expiry reviews. The Tribunal further considered that Parliament left it to the discretion of the Minister of Finance to trigger a review of any pre-existing measures in light of these recommendations and rulings, pursuant to the Minister's authority under section 76.1 of the *Special Import Measures Act* to request reviews by the CBSA and the Tribunal of their decisions where the Minister considers it necessary following the issuance of any recommendations or rulings of the WTO DSB.

SAMPLE OF NOTEWORTHY DECISIONS UNDER THE APPEALS AND EXCISE MANDATE

AP-2018-005 (Mattel Canada Inc.)

The goods in issue were the Fisher-Price "Roarin' Rainforest Jumperoo". The Tribunal had found in *Mattel I* ([10 July 2014], AP-2013-034 and AP-2013-040 [CITT]) that virtually identical goods were properly classified under tariff item No. 9503.00.90 as "other toys". Following *Mattel I*, the CBSA sought an opinion from the World Customs Organization (WCO), which found that the goods were classifiable as seats of heading No. 94.01. In the current case, the CBSA argued that the Tribunal should apply the WCO classification rather than follow *Mattel I*. The Tribunal noted that, although it must have regard to WCO classification opinions, this does not mean it should apply them in all circumstances, particularly not when there are, in its view, errors in the description of the characteristics and essential purpose of the product under review or significant flaws in the analysis offered by the WCO. As such, classification opinions are only one element that the Tribunal must examine. The Tribunal found several elements in the rationale offered by the WCO in support of its opinion to be either legally or factually questionable, if not incorrect. The Tribunal therefore decided not to follow the WCO opinion in this case. The Tribunal noted that the CBSA's course of action undermined the principles of certainty, predictability, finality and tribunal pre-eminence because it caused the relitigation of a matter that Mattel and other stakeholders had every reason to believe was settled. The issue of WCO classification opinions was similarly examined and treated in *Best Buy* (4 July 2019), AP-2016-027R (CITT).

AP-2019-002 (Landmark Trade Services)

The goods in issue were various foodstuffs. At issue was whether Landmark was the "importer" of the goods in issue as this would impact (1) the application of *General Import Permits* and (2) the validity of the Detailed Adjustment Statements (DASs) issued to Landmark. The parties agreed that the Tribunal had jurisdiction to hear the appeal but disagreed on the basis of that jurisdiction. The Tribunal found that it had jurisdiction as the CBSA had made a decision pursuant to subsection 60(4) of the *Customs Act* and, therefore, that it had made an implied decision on the identity of the importer, particularly due to the potential application of *General Import Permits*. Consequently, the Tribunal's decision on the identity of the importer would also impact the validity of the DASs. The Tribunal found that Landmark was not the importer: (1) it acted only as a paper intermediary; (2) it only facilitated the importation transaction; (3) it was not a properly authorized agent; and (4) the fact that it used its business number in customs documents was not relevant in the circumstances. The Tribunal therefore found that the CBSA could not issue the DASs to Landmark as the importer of the goods and remanded the matter to the CBSA to determine the proper importer and tariff classification.

AP-2018-017/018 (The Candy Spot and GPAE Trading Corp.)

The goods in issue were various non-alcoholic beverages. The question in issue was whether they qualified as originating goods under the *North American Free Trade Agreement* (NAFTA) and, therefore, whether they were entitled to preferential tariff treatment at the United States Tariff (UST) rate. In order to qualify for the UST, the *Customs Tariff* requires that two conditions be met: (1) proof of origin must be given and (2) the goods must be entitled to the tariff treatment in accordance with any applicable regulations or order. Regarding condition (1), only a "certificate of origin" is required. Regarding condition (2), a good originates in the territory of a NAFTA country where the good is produced entirely in the territory of one or more NAFTA countries exclusively from originating materials (with exceptions), or where a good is made of non-originating materials but undergoes further transformation in a NAFTA country. The Tribunal found that this could be established other than by documentary evidence. Through the testimony that it heard, the Tribunal was satisfied that the appellants had met their burden on the balance of probabilities, establishing that the goods were bottled in the United States and, therefore, eligible to the UST rate. Evidence of manufacturing in the United States was also in issue in *J. McElligott* (8 July 2019), AP-2018-045 (CITT).

AP-2017-021 (Cavavin [2000] Inc.)

The Tribunal determined that "refrigerators, household type" are not limited to appliances that refrigerate food items and stated that the fact that the good can be used in a commercial setting does not prevent classification as "household type".

AP-2017-055 (Globe Union Canada)

This case involved the wording of tariff item No. 9979.00.00 as it read prior to January 1, 2019. The Tribunal decided that tariff item No. 9979.00.00 is not meant to reward only the first inventor of a product, but rather that its goal is to ensure that goods intended and designed to assist persons with disabilities can enter Canada duty-free. A claimant need not demonstrate that it "invented the wheel". The goods in issue were manufactured based on well-established disability standards.

AP-2018-037 (Philips Electronics Ltd.)

The terms "instruments and appliances used in medical, surgical, dental or veterinary sciences" that appear in heading No. 90.18 inform tariff item No. 9977.00.00 where those words also appear (note 4 to Chapter 99 of the schedule to the *Customs Tariff*). The Tribunal ought to have regard to the notes to heading No. 90.18 unless there is a sound reason to do otherwise. Goods must be sufficiently dedicated to science to qualify for tariff item No. 9977.00.00. Here tooth brushes for use in electric toothbrushes did not qualify for duty relief.

AP-2018-038 (Cardinal Health Canada Inc.)

Before proposing an expert in linguistics, parties should carefully consider whether such testimony would infringe upon the Tribunal's prerogative of statutory interpretation.

AP-2018-065 (Casa Cubana [Spike Marks Inc.])

The Tribunal stated that payments to "middlemen" for "grey market" purchases should not be included in the value for duty of the goods: (1) they are not commissions/ brokerage fees since they are not sufficiently related to what is paid for the goods (as the price of the goods normally consists of production/acquisition costs, administrative/ marketing overhead, and a profit margin); (2) the payments are in any event exempted as a fee paid by the purchaser to its agent; and (3) the payments do not form part of the "price paid or payable" as defined by the *Customs Act*.

AP-2019-004 (Cool King Refrigeration Ltd.)

The Tribunal found that the appreciation of whether a food preparation is "based on" milk or dairy products is a question of "essentiality": if milk or dairy are more essential to the purpose and function of the goods in issue than any of the other ingredients, the goods in issue can be said to be "based on" milk or dairy products. It was not the case for the goods in issue. In *AFOD Ltd.* (13 November 2019), AP-2018-034 (CITT), the Tribunal decided that goods containing more than 5 percent milk solids cannot be considered ice sherbets.

SAMPLE OF NOTEWORTHY DECISIONS UNDER THE PROCUREMENT REVIEW MANDATE

PR-2019-048 (Seigniory Chemical Products Limited, trading as SCP SCIENCE)

A complainant who mistakenly sought recourse at the Office of the Procurement Ombudsman before filing a complaint with the Tribunal was not excused from its lateness, given that it had received sufficient information from the government institution to discern that its complaint was within the jurisdiction of the Tribunal. However, the Tribunal remarked that the government institution should have provided the complainant with information about recourse mechanisms much sooner than it did. Consequently, the Tribunal queried whether, in future cases, the time frame for calculating the ten-day deadlines of section 6 of the *Procurement Inquiry Regulations* ought to properly start from the day on which a government institution provides a denial of relief that includes information about recourse mechanisms. In PR-2019-047 (*Kaméléons & cie Solutions Design inc.*), the Tribunal again had occasion to remind government institutions that they must inform suppliers of recourse mechanisms in regret letters.

PR-2019-029 (Heddle Marine Service Inc. v. Department of Public Works and Government Services)

The solicitation at issue was designed to pre-qualify shipyards to construct up to six icebreakers for the Canadian Coast Guard. The complainant alleged that the government institution had engaged in closed consultations with one bidder and that the solicitation was structured to exclude other bidders. In its decision to conduct an inquiry into the complaint, the Tribunal noted that the solicitation invoked a national security exception to exclude the procurement from the requirements of any otherwise-applicable trade agreements. However, given that there was no information on file that would allow the Tribunal to verify that a national security exception was properly invoked as per the requirements of subsection 10(3) of the *Procurement Inquiry Regulations*, the Tribunal commenced an inquiry. The government institution brought a motion to dismiss the complaint on the grounds that the national security exception had been properly invoked. However, after the complaint was withdrawn, the Tribunal ceased its inquiry and declared the government institution's motion to be moot.

PR-2019-020 and PR-2019-025 (Heiltsuk Horizon Maritime Services Ltd. and Horizon Maritime Services Ltd. v. Department of Public Works and Government Services)

The complainants challenged the results of a re-evaluation that the Tribunal had previously recommended in PR-2018-023. The solicitation was for the services of two emergency towing vessels on a time charter basis for use by the Department of Fisheries and Oceans. The Tribunal found that the re-evaluation was not consistent with the language of the mandatory criterion at issue and the Tribunal's previous decision. The Tribunal recommended a second re-evaluation instead of recommending a successful bidder, noting that it reviews on a deferential standard of reasonableness and that
it lacked the technical expertise needed to re-evaluate bids. The Tribunal rejected the complainants' allegations of bias, as the evidence was insufficient and there was no indication that the presence of the same team leader in both evaluations was inappropriate. The Tribunal declined to award costs to the complainant in one of the two matters, despite its partial success, because its bias allegations were inappropriate and had unnecessarily complicated the proceedings.

PR-2019-026 (Hurricane Services Inc. v. Department of Public Works and Government Services)

The Tribunal terminated its inquiry on the ground that the complaint was not in respect of a procurement by a government institution that is subject to the trade agreements. The procurement was for equipment used by a training unit of the British Armed Forces at a Canadian Forces base. Canada acted as an agent, administering the contract and recovering all costs from the British Armed Forces. The Tribunal acknowledged the unusual situation that procurements such as this represent when identifying the proper venue for a complaint, but found that this is not a factor in determining whether the Tribunal has jurisdiction to inquire into the complaint.

PR-2019-045 (AJL Consulting v. Department of Agriculture and AgriFood)

The Tribunal confirmed that the principles for reasonableness review newly set out by the Supreme Court in *Vavilov v. Canada (Citizenship and Immigration)* apply—with the necessary adaptations—to the Tribunal's review of procurement evaluations.

PR-2019-009 (Rock Networks Inc. v. Department of Canadian Heritage)

The Tribunal declined to award costs to the government institution despite its success in the matter, because its response to the complainant's question had been unnecessarily vague and did not respond to the question posed.

PR-2019-004 (Terragon Envrionmental Technologies Inc.)

The Tribunal reiterated that its jurisdiction is limited to inquiring into breaches of specific chapters of the trade agreements listed in section 7 of the *Procurement Inquiry Regulations*. Specifically, the Tribunal found that it could not inquire into whether a solicitation breached chapters 1 and 6 of the *Canadian Free Trade Agreement* or Canada's climate change obligations under the *Paris Agreement*.

PR-2019-038 (Avro Bourdeau Aerospace Corp.)

A bidder who did not pre-qualify for a suppliers list at the first stage of a two-part solicitation process is not a "potential supplier" under paragraph 7(1)(a) of the *Procurement Inquiry Regulations* and may not complain about the second stage of the process. The Tribunal noted that the solicitation had invoked a national security exception to exclude the procurement from the requirements of any otherwise applicable trade agreement; however, given that the requirements of sections 6 and 7 of the *Procurement Inquiry Regulations* had not been met, the Tribunal did not determine whether the national security exception had been properly invoked.

PR-2018-042 (Kileel Developments Ltd. v. Department of Public Works and Government Services)

The Tribunal does not have jurisdiction over procurements of real estate leasing under the *Canadian Free Trade Agreement* (it did under its predecessor, the *Agreement on Internal Trade*); however, real estate leasing is a "service" that is covered under the *Revised Agreement on Government Procurement* and under the *North American Free Trade Agreement*.

PR-2019-017 (Pacific Northwest Raptors Ltd. v. Department of Public Works and Government Services)

The Tribunal found that the evaluators had relied upon an undisclosed criterion, which had unforeseeably prejudiced bidders for proposing certain techniques. The complainant would not have won the contract, but it was nonetheless awarded bid preparation costs because it did not receive the evaluation it could reasonably have expected.

JUDICIAL OR PANEL REVIEWS OF TRIBUNAL DECISIONS

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

Judicial Review of *SIMA* Cases

During the reporting period, no Tribunal decision was brought forth before the Federal Court of Appeal under section 76 of *SIMA* in the fiscal year.

Judicial Review of Procurement Cases

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

Customs and Excise Tax decisions appealed to the Federal Court of Appeal

There were 12 Tribunal decisions under the Customs Appeals and Excise Tax mandate that were brought forth to the Federal Court of Appeal during the reporting period.

Judicial Review by NAFTA Binational Panel

Tribunal findings or orders under sections 43, 44, 76.01, 76.02 and 76.03 of *SIMA* involving goods from the United States and Mexico may be reviewed by a binational panel established under NAFTA. No new requests were made for review by a binational panel.

WTO Dispute Resolution

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