

ANNUAL REPORT

**FOR THE FISCAL YEAR ENDING
MARCH 31, 2012**

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Cat. No. F40-2012
ISSN 0846-6629
www.citt-tcce.gc.ca

May 28, 2012

The Honourable Jim Flaherty, P.C., M.P.
Minister of Finance
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister:

I have the honour of transmitting to you, for tabling in the House of Commons, pursuant to section 41 of the *Canadian International Trade Tribunal Act*, the Tribunal's Annual Report for the fiscal year ending March 31, 2012.

Yours sincerely,

Stephen A. Leach
Chairperson

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CHAPTER I

HIGHLIGHTS

The Canadian International Trade Tribunal (the Tribunal) is an administrative tribunal operating within Canada's trade remedy system. It provides Canadian and international businesses with access to fair, transparent and timely processes for the investigation of trade remedy cases and complaints concerning federal government procurement and for the adjudication of appeals on customs and excise tax matters. At the request of the Government, the Tribunal provides advice in tariff, trade, commercial and economic matters.

In 2011-2012, the Tribunal issued more than 150 decisions and orders under its various mandates. The Tribunal members and staff successfully managed a substantial and complex caseload involving a total of 283 participants, 84 witnesses and more than 114,500 pages of official record.

The number of new anti-dumping investigations remained steady in 2011-2012 as compared to 2010-2011. The activities relating to public procurement complaints and appeals under the *Customs Act*, the *Special Import Measures Act (SIMA)* and the *Excise Tax Act* remained at significant levels throughout 2011-2012.

On October 20, 2011, Mr. Stephen A. Leach, who was previously a member of the Tribunal, was appointed Chairperson. Prior to his appointment, the two vice-chairpersons of the Tribunal, Mr. Serge Fréchette and Ms. Diane Vincent, each served as acting Chairperson on a rotational basis. The Tribunal would like to thank Mr. Fréchette and Ms. Vincent for their work and dedication during this transition period.

As part of the Tribunal's response to its Management Accountability Framework assessment, the Tribunal retained an independent research firm to conduct its first client satisfaction survey. The survey measured the level of client satisfaction with the Tribunal's services, tools and processes, and with clients' interaction with Tribunal staff. The Tribunal is pleased to report that the results were very positive and, where areas for improvement were noted, it will continue to look at ways to improve the delivery of its services to its users and stakeholders.

In 2011-2012, the Tribunal continued reviewing its Rules of Procedure to further streamline proceedings, reduce the paper burden imposed on parties and increase overall efficiency and transparency while preserving procedural fairness and the protection given to confidential information.

The Tribunal is proud to report that, for the first time, its annual report will be made available in an electronic format only. This initiative aligns with the Tribunal's priorities of becoming more environmentally responsible while, at the same time, reducing its operating costs. In the same vein, after successfully launching, in 2010, the electronic distribution to counsel and parties of its records in *SIMA* cases on an encrypted USB key, the Tribunal initiated a paperless pilot project where no hard copies of the case files were produced for Tribunal staff and members.

Trade Remedies

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. During 2011-2012, the Tribunal issued decisions in three preliminary injury inquiries, one final injury inquiry and two expiry reviews. The estimated value of the Canadian market for the final injury inquiry and the expiry reviews for which decisions were rendered represented more than \$2.8 billion and more than 1,200 direct jobs. The Tribunal also issued a determination in an interim review of its earlier findings pursuant to *SIMA*. At the end of the fiscal year, two final injury inquiries, one expiry review and two requests for interim review were in progress.

Procurement Review

During fiscal year 2011-2012, the Tribunal received 62 new procurement complaints and issued 61 decisions on whether to accept the complaints for inquiry. The Tribunal also issued final decisions in 12 cases that were accepted for inquiry and in 4 remanded cases, for a total of 77 decisions.

On August 15, 2011, the Tribunal's jurisdiction in respect of procurement review was expanded with the coming into force of the *Canada-Colombia Free Trade Agreement (CCOFTA)*, and changes were made to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.

Appeals

During fiscal year 2011-2012, a total of 76 new appeals were filed with the Tribunal pursuant to *SIMA*, the *Customs Act* and the *Excise Tax Act*. The Tribunal issued decisions in 33 appeals from decisions of the President of the Canada Border Services Agency (CBSA) pursuant to the *Customs Act* and two decisions under *SIMA*.

Outreach Activities

During the fiscal year, Tribunal members and staff made presentations at meetings of various international, legal, administrative and academic bodies, including a trade remedy practice course in Chinese Taipei. The Tribunal hosted an official delegation from the European Union. Staff also made presentations to several government departments and agencies. In addition, the Tribunal made its expertise available to Canada's trade negotiators in the context of various trade agreements.

Caseload

The first table below contains statistics pertaining to the Tribunal's caseload for 2011-2012. The second table contains statistics relating to other case-related activities in 2011-2012. These statistics illustrate the complexity and diversity of the cases considered by the Tribunal.

Tribunal Caseload Overview—2011-2012

	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, 2012)
Trade remedies								
Preliminary injury inquiries	-	3	3	N/A	N/A	3	-	-
Inquiries	1	2	3	N/A	N/A	1	-	2
Requests for public interest inquiries	-	-	-	-	-	-	-	-
Public interest inquiries	-	-	-	-	-	-	-	-
Requests for interim reviews	-	6	6	3	1	4	-	2
Interim reviews	-	3	3	N/A	N/A	1	-	2
Expiries ¹	-	3	3	2	-	2	-	1
Expiry reviews	1	2	3	N/A	N/A	2	-	1
Remanded cases	-	-	-	N/A	N/A	-	-	-
TOTAL	2	19	21	5	1	13		8
Procurement								
Complaints received	1 ²	62	63	15	46	61	-	1
Complaints accepted for inquiry	3	-	3	N/A	N/A	12	5	2
Remanded cases ³	-	4	4	N/A	N/A	4	N/A	-
TOTAL	4	66	70	15	46	77	5	3
Appeals								
Extensions of time								
<i>Customs Act</i>	4	7	11	N/A	N/A	7	-	4
<i>Excise Tax Act</i>	-	4	4	N/A	N/A	1	-	3
TOTAL	4	11	15	N/A	N/A	8	-	7
Appeals								
<i>Customs Act</i>	54	65	119	N/A	N/A	32	28	59
<i>Excise Tax Act</i>	24	4	28	N/A	N/A	-	-	28
<i>Special Import Measures Act</i>	3	7	10	N/A	N/A	2	2	6
Remanded cases	1	1	2	N/A	N/A	1	-	1
TOTAL	82	77	159	N/A	N/A	35	30	94
Standing textile reference								
Requests to initiate investigations	-	-	-	-	-	-	-	-
Investigations	-	-	-	N/A	N/A	-	-	-

1. With respect to expiries, “decisions to initiate” refer to decisions to initiate expiry reviews.
 2. Complaint that was still under consideration at the end of the previous fiscal year.
 3. 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 2011-2012

	Trade Remedy Activities	Procurement Review Activities	Appeals	Standing Textile Reference	TOTAL
Orders					
Disclosure orders	6	-	-	-	6
Cost award orders	N/A	11	N/A	N/A	11
Compensation orders	N/A	3	N/A	N/A	3
Production orders	-	-	-	-	-
Postponement of award orders	N/A	2	N/A	N/A	2
Rescission of postponement of award orders	N/A	2	N/A	N/A	2
Directions/administrative rulings					
Requests for information	50	-	-	-	50
Motions	-	2	2	-	4
Subpoenas	-	-	6	-	6
Other statistics					
Public hearing days	11	2	32	-	45
File hearings ¹	7	58	11	-	76
Witnesses	26	6	52	-	84
Participants	53	85	145	-	283
Questionnaire replies	149	-	-	-	149
Exhibits ²	1,624	732	1,613	-	3,969
Pages of official records ²	55,610	21,615	37,341	-	114,566

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 II

MANDATE, ORGANIZATION AND ACTIVITIES

Introduction

The Tribunal is an administrative tribunal operating within Canada's trade remedy system. It is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and that reports to Parliament through the Minister of Finance. The Tribunal's strategic outcome is the fair, timely and transparent disposition of all international trade cases, procurement cases and government-mandated inquiries within the Tribunal's jurisdiction.

The main legislation governing the work of the Tribunal is the *Canadian International Trade Tribunal Act (CITT Act)*, *SIMA*, the *Customs Act*, the *Excise Tax Act*, the *Canadian International Trade Tribunal Regulations*, the *Canadian International Trade Tribunal Procurement Inquiry Regulations* and the *Canadian International Trade Tribunal Rules (Rules)*.

Mandate

The Tribunal is the main quasi-judicial institution in Canada's trade remedy system and has authority to:

- inquire into whether dumped or subsidized imports have caused, or are threatening to cause, injury to a domestic industry;
- inquire into complaints by potential suppliers concerning procurement by the federal government that is covered by the *North American Free Trade Agreement (NAFTA)*, the *Agreement on Internal Trade (AIT)*, the *WTO Agreement on Government Procurement (AGP)*, the *Canada-Chile Free Trade Agreement (CCFTA)*, the *Canada-Peru Free Trade Agreement (CPFTA)* and the *CCOFTA*;
- hear appeals of decisions of the CBSA made under the *Customs Act* and *SIMA* or of the Minister of National Revenue under the *Excise Tax Act*;

- 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;
- investigate requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations and to make recommendations to the Minister of Finance on the requests; and
- inquire into complaints by domestic producers that increased imports are causing, or threatening to cause, injury to domestic producers and, as directed, make recommendations to the Government on an appropriate remedy.

Governing Legislation

Section	Authority
<i>CITT Act</i>	
18	Inquiries on economic, trade or commercial interests of Canada by reference from the Governor in Council
19	Inquiries into tariff-related matters by reference from the Minister of Finance
19.01	Safeguard inquiries concerning goods imported from the United States or Mexico by reference from the Governor in Council
19.011	Safeguard inquiries concerning goods imported from Israel by reference from the Governor in Council
19.012	Safeguard inquiries concerning goods imported from Chile by reference from the Governor in Council
19.0121	Safeguard inquiries concerning goods imported from Colombia by reference from the Governor in Council
19.013	Safeguard inquiries concerning goods imported from Costa Rica by reference from the Governor in Council
19.014	Safeguard inquiries concerning goods imported from Iceland by reference from the Governor in Council
19.015	Safeguard inquiries concerning goods imported from Norway by reference from the Governor in Council
19.016	Safeguard inquiries concerning goods imported from Switzerland or Liechtenstein by reference from the Governor in Council
19.017	Safeguard inquiries concerning goods imported from Peru by reference from the Governor in Council
19.02	Mid-term reviews with regard to global safeguard and anti-surge measures
20	Global safeguard inquiries by reference from the Governor in Council
23(1)	Global safeguard complaints by domestic producers
23(1.01) and (1.03)	Safeguard complaints by domestic producers concerning goods imported from the United States
23(1.02) and (1.03)	Safeguard complaints by domestic producers concerning goods imported from Mexico
23(1.04)	Safeguard complaints by domestic producers concerning goods imported from Israel
23(1.05) and (1.06)	Safeguard complaints by domestic producers concerning goods imported from Chile
23(1.061)	Safeguard complaints by domestic producers concerning goods imported from Colombia
23(1.07) and (1.08)	Safeguard complaints by domestic producers concerning goods imported from Costa Rica
23(1.09)	Safeguard complaints by domestic producers concerning goods imported from Iceland
23(1.091)	Safeguard complaints by domestic producers concerning goods imported from Norway
23(1.092)	Safeguard complaints by domestic producers concerning goods imported from Switzerland or Liechtenstein
23(1.093)	Safeguard complaints by domestic producers concerning goods imported from Peru
30	Further safeguard inquiries by reference from the Governor in Council
30.01	Surge complaints regarding goods from NAFTA countries
30.011	Surge complaints regarding goods from Israel
30.012	Surge complaints regarding goods from Chile
30.08 and 30.09	Extension inquiries with regard to global safeguard and anti-surge measures
30.14	Complaints by potential suppliers in respect of government procurement for designated contracts
30.21	Inquiries into market disruption and trade diversion in respect of goods originating in China by reference from the Governor in Council
30.22	Complaints of market disruption in respect of goods originating in China
30.23	Complaints of trade diversion in respect of goods originating in China
30.24	Further inquiries into market disruption or trade diversion by reference from the Governor in Council
30.25	Expiry reviews of measures relating to market disruption or trade diversion in respect of goods originating in China

Governing Legislation (cont'd)

Section	Authority
SIMA	
33 and 37	Advisory opinions on injury by reference from the CBSA or further to requests by affected parties
34(2)	Preliminary injury inquiries
37.1	Preliminary determinations of injury
42	Inquiries with respect to injury caused by the dumping and subsidizing of goods
43	Findings of the Tribunal concerning injury
44	Recommencement of inquiries (on remand from the Federal Court of Appeal or a binational panel)
45	Public interest inquiries
46	Advice to the CBSA regarding evidence of injurious dumping or subsidizing of like goods
61	Appeals of re-determinations of the CBSA concerning normal values, export prices or amounts of subsidies or whether imported goods are goods of the same description as goods to which a Tribunal finding applies
76.01	Interim reviews of Tribunal orders and findings
76.02	Reviews resulting from the CBSA's reconsideration of final determinations of dumping or subsidizing
76.03	Expiry reviews
76.1	Reviews at the request of the Minister of Finance as a result of rulings of the WTO Dispute Settlement Body
89	Rulings on who is the importer for purposes of payment of anti-dumping or countervailing duties by request of the CBSA
91	Reconsideration of rulings on who is the importer
Customs Act	
60.2	Applications for extensions of time to request a re-determination or a further re-determination
67	Appeals of decisions of the CBSA concerning value for duty, origin and tariff classification of imported goods
67.1	Applications for orders extending the time to file notices of appeal under section 67
70	References from the CBSA for advisory opinions relating to the origin, tariff classification or value for duty of goods
Excise Tax Act	
81.19, 81.21, 81.22, 81.23, 81.27 and 81.33	Appeals of assessments and determinations of excise tax (on automobiles, air conditioners designed for use in automobiles, gasoline, aviation gasoline, diesel fuel and aviation fuel) made by the CRA
81.32	Applications for extensions of time for internal CRA objection procedure or for appeal to Tribunal
Energy Administration Act	
13	Declarations concerning liability for and the amount of any oil export charge that is payable where oil is transported by pipeline or other means to a point of delivery outside Canada

Method of Operation

The Chairperson may assign either one or three members of the Tribunal to deal with cases. Members so assigned have and may exercise all the Tribunal's powers and may perform all the Tribunal's duties and functions in relation to the cases.

The Tribunal proceeds through file hearings or public hearings. Public hearings are held at the Tribunal's offices in Ottawa, Ontario. Public hearings may also be held elsewhere in Canada, either in person or through videoconferencing. In accordance with section 35 of the *CITT Act*, hearings should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit.

Pursuant to section 17 of the *CITT Act*, the Tribunal is a court of record, and it has all the powers, rights and privileges as are vested in a superior court with regard to procedural matters necessary or proper for the due exercise of its jurisdiction. The Tribunal follows rules and procedures similar to those of a court of justice; for instance, the Tribunal can subpoena witnesses and require parties to produce information. However, in order to facilitate greater access, the rules and procedures are not as formal or strict.

The *CITT Act* contains provisions for the protection of confidential information. Only independent counsel who has filed declarations and confidentiality undertakings may have access to confidential information. Protecting commercially sensitive information against unauthorized disclosure has been, and continues to be, of paramount importance to the Tribunal.

The Tribunal's Web site provides an exhaustive repository of all Tribunal notices, decisions and publications, as well as the *Canadian International Trade Tribunal Regulations*, the *Rules*, directives, guides, practice notices, Tribunal procedures and other information relating to its current activities. The Tribunal offers a notification service that informs subscribers of each new posting on its Web site. Subscribers can also choose a specific category of interest.

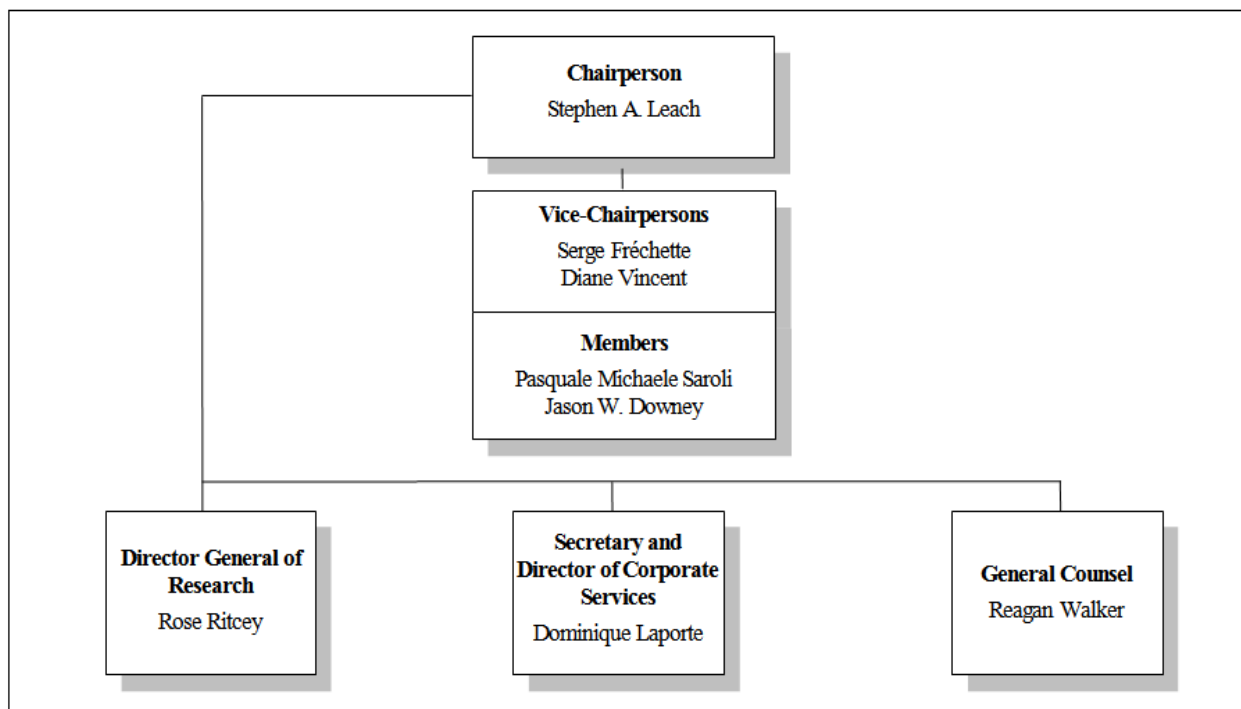
Members of the Tribunal

The Tribunal may be composed of up to seven full-time members, including a chairperson and two vice-chairpersons. All are appointed by the Governor in Council for a term of up to five years, which can be renewed once. The Chairperson is the Chief Executive Officer and is responsible for the assignment of a presiding member and panel to cases and for the management of the Tribunal's work. Members come from a variety of educational backgrounds and experience.

Organization

The Tribunal is led by the Chairperson and is supported by a permanent staff of 77 persons who are employees of the public service. The organizational structure is as follows:

- the **Chairperson**, the Chief Executive Officer, responsible for the assignment of cases to the members and for the management of the Tribunal's workload and all its resources;
- the **Director General, Research**, responsible for the investigative portion of inquiries, including fact-finding related to tariff, trade, commercial and economic matters, and the provision of research services to the members of the Tribunal;
- the **General Counsel**, responsible for the provision of legal services to the members and staff of the Tribunal; and
- the **Secretary and Director of Corporate Services**, responsible for relations with the public and parties, the court registrar functions of the Tribunal, editing and translation of Tribunal decisions and the full range of corporate services (human resources, information technology/information management, finance, accommodation and acquisitions).



Consultations and External Relations

Through the Bench and Bar Committee, the Tribunal provides a forum to promote discussion on issues of procedure. The committee includes representatives from the Canadian Bar Association, counsel from the Department of Justice and members of the trade consulting community who appear regularly before the Tribunal. The Tribunal also consults with counsel, representatives of industries and others who appear or are likely to appear before the Tribunal, to exchange views on new procedures being considered by the Tribunal prior to their publication as guidelines or practice notices. The Tribunal also briefs federal government departments and trade associations on its procedures.

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

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

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*.

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. This is initiated by intergovernmental consultations under the WTO Dispute Settlement Understanding.



CHAPTER III

DUMPING AND SUBSIDIZING INJURY INQUIRIES AND REVIEWS

Process

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

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

The determination of dumping and subsidizing is the responsibility of the CBSA. The Tribunal determines whether such dumping or subsidizing has caused “injury” or “retardation” or is threatening to cause injury to 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 forwarded to all known interested persons.

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. 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

Preliminary injury inquiry No.	PI-2011-001	PI-2011-002	PI-2011-003
Product	Pup joints	Stainless steel sinks	Potassium silicate solids
Type of case/country	Dumping and subsidizing/China	Dumping and subsidizing/China	Dumping and subsidizing/Pakistan
Date of determination	November 14, 2011	December 28, 2011	March 6, 2012
Determination	Reasonable indication of injury or retardation or of threat of injury	Reasonable indication of injury or of threat of injury	Reasonable indication of injury or of threat of injury
Participants	6	9	4
Exhibits	32	31	60
Pages of official record	1,000	2,200	4,350

Preliminary Injury Inquiries Completed in Fiscal Year and in Progress at the End of the Fiscal Year

As illustrated in the above table, the Tribunal completed three preliminary injury inquiries in the fiscal year. There were no preliminary injury inquiries in progress at the end of the fiscal year.

Final Injury Inquiries

If the CBSA makes a preliminary determination of dumping or subsidizing, the Tribunal commences a final injury inquiry under 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 a final determination of dumping or subsidizing is made.

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. The Tribunal's staff carries out extensive research for each inquiry. The Tribunal sends questionnaires to Canadian producers, importers, purchasers, foreign producers and exporters. Based primarily on questionnaire responses, the Tribunal's staff prepares a report that focuses on the factors that the Tribunal must consider in arriving at its decision on injury or retardation or threat of injury to a domestic industry. The report becomes part of the case record and is made available to counsel and parties.

Parties participating in the proceedings may present their own cases or be represented by counsel. Confidential or business-sensitive information is protected in accordance with provisions of the *CITT Act*.

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. after 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 many 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.

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

Final Injury Inquiry Activities

Inquiry No.	NQ-2010-002	NQ-2011-001	NQ-2011-002
Product	Steel grating	Pup joints	Stainless steel sinks
Type of case/country	Dumping and subsidizing/China	Dumping and subsidizing/China	Dumping and subsidizing/China
Date of finding	April 19, 2011	In progress	In progress
Finding	Injury		
Questionnaires sent	172		
Questionnaires received	83		
Requests for exclusions	-		
Requests for exclusions granted	-		
Participants	1		
Exhibits	637		
Pages of official record	10,000		
Public hearing days	4		
Witnesses	7		

Final Injury Inquiry Completed in the Fiscal Year

As illustrated in the above table, the Tribunal completed one final injury inquiry in the fiscal year. Two final injury inquiries were still in progress at the end of the fiscal year. The completed inquiry concerned steel grating. The following summary was prepared for general information purposes only and is of no legal effect.

NQ-2010-002—Steel Grating

The Tribunal sent detailed questionnaires to 2 known domestic producers, 63 of the largest importers, 25 purchasers of steel grating and 61 potential foreign producers and exporters of the subject goods. It also sent questionnaires on classes of goods to 2 producers, 3 importers and 16 purchasers. Of the 172 questionnaires sent, 83 responses were used in the Tribunal's analysis. There was 1 participant in the inquiry, with 7 witnesses appearing before the Tribunal during 4 days of public hearing. The official record consisted of 637 exhibits, totalling 10,000 pages of documents.

The Tribunal first determined that domestically produced steel grating constituted like goods in relation to the subject goods. The Tribunal then concluded that there were two classes of goods, carbon and alloy steel bar grating and stainless steel bar grating. In a separate opinion on classes of goods, Member Fréchette concluded that there were three classes of goods: galvanized carbon and alloy steel grating, non-galvanized carbon and alloy steel grating, and stainless steel grating. The Tribunal terminated its inquiry in respect of stainless steel grating, due to the negligible volume of imports. Finally, the Tribunal determined that Fisher & Ludlow Ltd. (Fisher & Ludlow) and Borden Metal Products (Canada) Limited constituted the domestic industry. However, since Fisher & Ludlow alone constituted a major proportion of the total domestic production of the like goods, the Tribunal decided to restrict its analysis of injury to the evidence pertaining to Fisher & Ludlow's production.

The Tribunal was of the view that there was a significant increase in the volume of imports of the subject goods in absolute terms, and relative to the production and consumption of like goods. The Tribunal found that the subject goods had significantly undercut, depressed and suppressed the price of the like goods. The Tribunal also found that the prevalence of the subject goods in the Canadian market, especially in 2008 and 2009, had a significant negative impact on Fisher & Ludlow's production and capacity utilization rates. In addition, the Tribunal found that the dumping and subsidizing of the subject goods resulted in lost sales and market share for the domestic industry, negatively impacted the financial performance of the domestic industry in 2009 and interim 2010, caused declines in employment and productivity, and resulted in negative effects on return on investment and other indicators.

With respect to the accumulative losses suffered by the domestic steel grating industry that are attributable to the recession, the Tribunal concluded that the dumping and subsidizing of the subject goods had, in and of themselves, caused material injury.

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

As already mentioned, there were two final injury inquiries in progress at the end of the fiscal year, *Pup Joints* (NQ-2011-001) and *Stainless Steel Sinks* (NQ-2011-002), both of which concern dumped and subsidized imports from China.

Public Interest Inquiries Under Section 45 of SIMA

Following a finding of injury, the Tribunal notifies all interested parties that any submissions requesting a public interest inquiry must be filed within 45 days. It may initiate, either after a request from an interested person or on its own initiative, a public interest inquiry following a finding of injury caused by dumped or subsidized imports, if it is of the opinion that there are reasonable grounds to consider that the

imposition of all or part of the duties may not be in the public interest. If it is of this view, the Tribunal then conducts a public interest inquiry pursuant to section 45 of *SIMA*. The result of this inquiry may be a report to the Minister of Finance recommending that the duties be reduced and by how much.

There were no requests for a public interest inquiry during the fiscal year.

Interim Reviews

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

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

Interim Review Activities

Request for interim review No./Interim review No.	RD-2011-001 and RD-2011-003 (interim reviews)	RD-2011-002 (request for interim review)	RD-2011-004 (interim review)	RD-2011-005	RD-2011-006
Product	Aluminum extrusions	Aluminum extrusions	Mattress innerspring units	Aluminum extrusions	Aluminum extrusions
Type of case/country	Dumping and subsidizing/China	Dumping and subsidizing/China	Dumping/China	Dumping and subsidizing/China	Dumping and subsidizing/China
Date of order or of withdrawal	In progress	March 14, 2012	March 30, 2012	In progress	In progress
Order		No review	Finding continued		
Participants		1	5		
Exhibits		16	29		
Pages of official record		150	90		

Requests for Interim Reviews and Interim Reviews Completed in the Fiscal Year

As can be seen from the above table, the Tribunal received six requests for interim reviews, four of which were still in progress at the end of this fiscal year.

In Request for Interim Review No. RD-2011-002, the Tribunal determined that an interim review was not warranted. In Interim Review No. RD-2011-004, the Tribunal continued its finding without amendment.

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 10 months before the expiry date of the order or finding, the Secretary of 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

Expiry No.	LE-2011-001	LE-2011-002	LE-2011-003
Product	Copper pipe fittings	Bicycles	Hot-rolled carbon steel plate
Type of case/country	Dumping/United States, Korea and China Subsidizing/China	Dumping/Chinese Taipei and China	Dumping/China
Date of order or notice of expiry review	June 1, 2011	March 28, 2012	In progress
Decision	Expiry review initiated	Expiry review initiated	
Participants	4	14	
Pages of official record	450	200	

As illustrated in the above table, the Tribunal decided to commence two expiry reviews in the fiscal year.

On the basis of submissions from interested parties, the Tribunal was of the view that expiry reviews were warranted and initiated Expiry Review No. RR-2011-001 respecting copper pipe fittings and Expiry Review No. RR-2011-002 respecting bicycles.

At the end of the fiscal year, consideration of Expiry No. LE-2011-003 respecting hot-rolled carbon steel plate was in progress.

Expiry Reviews

When the Tribunal initiates a 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 forwarded to all known interested parties.

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

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

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

Expiry Review Activities

Expiry Review No.	RR-2010-001	RR-2011-001	RR-2011-002
Product	Flat hot-rolled carbon and alloy steel sheet and strip	Copper Pipe Fittings	Bicycles
Type of case/country	Dumping/Brazil, China, Chinese Taipei, India, South Africa and Ukraine Subsidizing/India	Dumping/United States, Korea and China Subsidizing/China	Dumping/Chinese Taipei and China
Date of order	August 15, 2011	February 17, 2012	In progress
Order	Order continued for Brazil, China, Chinese Taipei, India and Ukraine Order rescinded for South Africa	Findings continued	
Questionnaires sent¹	183	68	
Questionnaires received²	44	22	
Participants	5	4	
Exhibits	463	327	
Pages of official record	21,500	15,670	
Public hearing days	5	2	
Witnesses	14	5	

1. Expiry review questionnaires are sent to a comprehensive list of known domestic producers and to all potential importers and exporters, and are for use by the CBSA and the Tribunal.
2. As in the case of final injury inquiries, the Tribunal focuses its questionnaire response follow-up on all known domestic producers and the largest importers, which generally account for 80 percent or more of the subject imports during the period of review.

Expiry Reviews Completed in the Fiscal Year

As illustrated in the above table, during the fiscal year, the Tribunal completed two expiry reviews.

RR-2010-001—Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip

This expiry review concerned the dumping of flat hot-rolled carbon and alloy steel sheet and strip originating in or exported from Brazil, China, Chinese Taipei, India, South Africa and Ukraine, and the subsidizing of flat hot-rolled carbon and alloy steel sheet and strip from India.

The Tribunal sent detailed questionnaires to the 4 known domestic producers, 114 of the largest importers and 65 foreign producers and exporters of the subject goods in the named countries. Of the 183 questionnaires sent, 44 responses were used in the Tribunal's analysis. There were 5 participants in the expiry review, with 14 witnesses appearing before the Tribunal during 5 days of public hearing. The official record consisted of 463 exhibits, totalling 21,500 pages of documents.

On August 15, 2011, the Tribunal continued its order in respect of flat hot-rolled carbon and alloy steel sheet and strip from Brazil, China, Chinese Taipei, India and Ukraine and rescinded its order in respect of flat hot-rolled carbon and alloy steel sheet and strip from South Africa.

RR-2011-001—Copper Pipe Fittings

This expiry review concerned the dumping of copper pipe fittings from the United States, Korea and China, and the subsidizing of copper pipe fittings from China.

The Tribunal sent 2 producers' questionnaires, 30 importers' questionnaires and 36 foreign producers' questionnaires to foreign producers and exporters of the subject goods in the named countries. Of the 68 questionnaires sent, 22 completed questionnaires were used in the Tribunal's analysis. There were 7 participants in the expiry review; however, 3 parties withdrew their participation prior to the hearing. No parties appeared before the Tribunal or provided submissions in opposition to the continuation of the findings. Five witnesses for the domestic industry appeared before the Tribunal during 2 days of public hearing. The official record consisted of 327 exhibits, totalling 15,670 pages of documents.

On February 17, 2012, the Tribunal continued its findings in respect of copper pipe fittings from the United States, Korea and China.

Expiry Reviews in Progress at the End of the Fiscal Year

There was one expiry review in progress at the end of the fiscal year respecting bicycles.

RR-2011-002—Bicycles

This is an expiry review of the Tribunal's order made on December 10, 2007, in Expiry Review No. RR-2006-001, continuing, with amendment, its order made on December 9, 2002, in Expiry Review No. RR-2002-001, continuing, with amendment, its order made on December 10, 1997, in Review No. RR-97-003, continuing, with amendment, its finding made on December 11, 1992, in Inquiry No. NQ-92-002, concerning the dumping of bicycles originating in or exported from Chinese Taipei and China.

Judicial or Panel Reviews of SIMA Decisions

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

Summary of Judicial or Panel Reviews

Case No.	Product	Country of Origin	Court File No./Status
RR-2009-003	Refined sugar	United States, Denmark, Germany, Netherlands, United Kingdom and European Union	A-461-10

Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not ordinarily participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.

WTO Dispute Resolutions

There were no Tribunal findings or orders before the WTO Dispute Settlement Body during the fiscal year.

SIMA Findings and Orders in Force as of March 31, 2012

During calendar year 2011, there were 19 *SIMA* findings and orders in force, affecting approximately 0.28 percent of Canadian imports, 2.44 percent of Canadian shipments and 0.96 percent of Canadian employment.

Summary of Findings and Orders in Force

Review No. or Inquiry No.	Date of Decision	Product	Type of Case/Country	Related Decision No. and Date
NQ-2007-001	March 10, 2008	Seamless carbon or alloy steel oil and gas well casing	Dumping and subsidizing/China	
NQ-2008-001	August 20, 2008	Carbon steel welded pipe	Dumping and subsidizing/China	
NQ-2008-002	December 11, 2008	Thermoelectric containers	Dumping and subsidizing/China	
NQ-2008-003	March 17, 2009	Aluminum extrusions	Dumping and subsidizing/China	
NQ-2009-002	November 24, 2009	Mattress innerspring units	Dumping/China	
NQ-2009-003	February 2, 2010	Hot-rolled carbon steel plate and high-strength low-alloy plate	Dumping/Ukraine	
NQ-2009-004	March 23, 2010	Oil country tubular goods	Dumping and subsidizing/China	
NQ-2010-001	October 9, 2010	Greenhouse bell peppers	Dumping/Netherlands	
NQ-2010-002	April 19, 2011	Steel grating	Dumping and subsidizing/China	
RR-2006-001	December 10, 2007	Bicycles	Dumping/Chinese Taipei and China	RR-2002-001 (December 9, 2002) RR-97-003 (December 10, 1997) NQ-92-002 (December 11, 1992)
RR-2007-001	January 9, 2008	Hot-rolled carbon steel plate	Dumping/China	RR-2001-006 (January 10, 2003) NQ-97-001 (October 27, 1997)
RR-2007-003	July 15, 2008	Carbon steel pipe nipples and adaptor fittings	Dumping/China	RD-2006-006 (June 8, 2007) NQ-2002-004 (July 16, 2003)
RR-2008-001	December 22, 2008	Structural tubing	Dumping/Korea, South Africa and Turkey	NQ-2003-001 (December 23, 2003)
RR-2008-002	January 8, 2009	Hot-rolled carbon steel plate and high-strength low-alloy steel plate	Dumping/Bulgaria, Czech Republic and Romania	NQ-2003-002 (January 9, 2004)
RR-2009-001	January 6, 2010	Carbon steel fasteners	Dumping/China and Chinese Taipei Subsidizing/China	NQ-2004-005 (January 7, 2005)
RR-2009-002	September 10, 2010	Whole potatoes	Dumping/United States	RR-2004-006 (September 12, 2005) RR-99-005 (September 13, 2000) RR-94-007 (September 14, 1995) RR-89-010 (September 14, 1990) CIT-16-85 (April 18, 1986) ADT-4-84 (June 4, 1984)
RR-2009-003	November 1, 2010	Refined sugar	Dumping/United States	RR-2004-007 (November 2, 2005) RR-99-006 (November 3, 2000) NQ-95-002 (November 6, 1995)
RR-2010-001	August 15, 2011	Flat hot-rolled carbon and alloy steel sheet and strip	Dumping/Brazil, China, Chinese Taipei, India and Ukraine Subsidizing/India	NQ-2001-001 (August 17, 2001) RR-2005-002 August 16, 2006
RR-2011-001	February 17, 2012	Copper pipe fittings	Dumping/United States, Korea and China Subsidizing/China	NQ-2006-002 (February 19, 2007)

Note: For complete product descriptions, refer to the most recent finding or order available at www.citt-tcce.gc.ca.



CHAPTER IV

PROCUREMENT REVIEW

Introduction

Potential suppliers that believe that they may have been unfairly treated during a procurement solicitation covered by *NAFTA*, the *AIT*, the *AGP*, the *CCFTA*, the *CPFTA* or *CCOFTA* 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 *NAFTA*, the *AIT*, the *AGP*, the *CCFTA*, the *CPFTA* or *CCOFTA*.

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 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 also published on MERX, Canada's electronic tendering service, and 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 are, by statute, supposed to 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 and circumstances of the case.

Procurement Complaints

Summary of Activities

	2010-2011	2011-2012
Number of Procurement Cases Received		
Carried over from previous fiscal year	72	4
Received in fiscal year	94	62
Remanded	1	4
Total	167	70
Complaints Withdrawn or Cases Closed		
Withdrawn	6	4
Abandoned while filing	-	1
Subtotal	6	5
Disposition—Complaints Received		
Decisions to initiate	52	15
Lack of jurisdiction/not a potential supplier	2	7
Late filing	43	11
Not a designated contract/no reasonable indication of a breach/premature	18	28
Subtotal	115	61
Disposition—Complaints Accepted for Inquiry		
Complaints dismissed	4	1
Complaints not valid	9	10
Complaints valid or valid in part	76	1
Inquiries ceased	4	-
Subtotal	93	12
Outstanding at End of Fiscal Year	4	3

In 2011-2012, the Department of Public Works and Government Services (PWGSC) issued approximately 15,487 contracts valued at between \$25,000 and \$2 billion each, for a total value of \$13 billion. The 62 complaints that the Tribunal received in the fiscal year pertained to 53 different contracts and represented a value of over \$300 million.

Summary of Selected Determinations

During the fiscal year, the Tribunal issued 61 decisions on whether to accept complaints for inquiry, 12 final decisions on complaints that were accepted for inquiry and 4 decisions in cases remanded to the Tribunal by the Federal Court of appeal for a total of 77 decisions. Three cases were still in progress at the end of the fiscal year. The table at the end of this chapter summarizes these activities.

Of the complaints investigated by the Tribunal in carrying out its procurement review functions, certain decisions stand out because of their legal significance. Brief summaries of a representative sample of these cases are included below. These summaries have been prepared for general information purposes only and are not intended to be of any legal value.

PR-2010-086—Entreprise Marissa Inc.

The Tribunal held a public hearing in this case. There were 2 participants in this inquiry. The official record consisted of 33 exhibits.

The complaint was filed by Entreprise Marissa Inc. (Marissa) concerning an invitation to tender by PWGSC for the maintenance dredging of the St. Lawrence Seaway in the North Traverse sector, between Saint-Jean-de-l'Île-d'Orléans and Cap Gribane, and the Bécancour sector, which extends from Bécancour to Batiscan. Marissa alleged that one of the mandatory requirements of the invitation to tender was overly restrictive and created an “unnecessary obstacle” that prevented it from tendering, which, according to Marissa, was contrary to the fair procurement principles set out in the *AIT*.

According to Marissa, the condition requiring that the dredge be equipped with doors in the hull had never been stipulated previously in any of the invitations to tender for dredging, notwithstanding that the obligation to perform dredging had existed for 27 years. Marissa alleged that the addition of the condition had the effect of restricting competition without valid reason.

The Tribunal held a hearing in Ottawa on April 20, 2011. Marissa called its president and a geological engineer as witnesses, and PWGSC called an expert in dredging. Marissa argued that doors in the hull were hardly advantageous to the environment and called into question the preference for underwater doors found in the environmental impact study. PWGSC responded that, by adding the requirement for doors in the hull, it was merely stipulating what was already the industry norm and that it needed to comply with the environmental impact study.

The Tribunal found no basis to conclude that the subject requirement had been added with a view to eliminating Marissa from the process or that PWGSC discriminated against Marissa or its services. Stipulating requirements in tender documentation that were necessary for the achievement of PWGSC's objectives but which also had the effect of eliminating a potential supplier did not constitute an unnecessary obstacle to trade. Interpreting the *AIT* without accounting for the Government's needs is unacceptable. The Tribunal concluded that the complaint was not valid.

PR-2011-017—BRC Business Enterprises Ltd.

The Tribunal considered this case on the basis of written submissions. There were 2 participants in this inquiry. The official record consisted of 18 exhibits.

The complaint was filed by BRC Business Enterprises Ltd. (BRC) concerning a procurement by PWGSC for the supply, delivery and installation of freestanding furniture on an as-and-when-required basis. BRC alleged that PWGSC improperly declared non-compliant its offer in response to the Request for a Standing Offer (RFSO) and failed to evaluate its offer in accordance with the express terms of the solicitation documents.

In issue was the application of the RFSO. Article 1.1.1 of Part 4 of the RFSO stated the follows: “Mandatory Criteria must be submitted with the offer or within 5 business days upon request from the Contracting Authority. (Failure to do so will render the offer non-responsive).” Annex C to the RFSO, “**TEST REPORT FORMS for Freestanding Office Desk Products and Components**” stated the following: “. . . TEST REPORT FORMS MUST ALSO BE COMPLETED FOR EACH SERIES OFFERED AND SUBMITTED WITH YOUR PROPOSAL. FAILURE TO DO SO WILL RENDER YOUR [FIRM’S] PROPOSAL NON-COMPLIANT AND NO FURTHER EVALUATION WILL BE UNDERTAKEN.”

When submitting its offer, BRC also submitted its test report. However, the dimensions of the lateral file stipulated in the test report differed from those stipulated in the RFSO, and PWGSC sought clarification. Not satisfied with BRC’s answers, PWGSC evaluated BRC’s offer as being non-compliant.

BRC submitted, in effect, that it did not matter that the test was incomplete because the RFSO did not require it at the time of closing but rather only five business days following a request therefor. The Tribunal found that it was consistent with the remainder of the RFSO and with the well-established principle that the onus is on the offeror to demonstrate compliance with mandatory criteria.

The Tribunal found no basis to conclude that, by declaring BRC’s bid non-compliant with regard to the Category 2 freestanding furniture on the basis of article 1.1.1 of Part 4 of the RFSO, PWGSC acted in a manner that was inconsistent with the provisions of the RFSO or with any of the applicable provisions of the trade agreements. The Tribunal concluded that the complaint was not valid.

PR-2011-041—FreeBalance Inc.

The Tribunal considered this case on the basis of written submissions. There were 2 participants in this inquiry. The official record consisted of 14 exhibits.

The complaint was filed by FreeBalance Inc. (FreeBalance) concerning a procurement (Solicitation No. 1000299304) by the Canada Revenue Agency (CRA) for the modernization of its revenue management system. More specifically, the CRA proceeded to procure, on a sole-source basis, from SAP Canada Inc. (SAP), the activation key to the SAP Public Sector Collection and Disbursement (PSCD) module, which forms part of an SAP software solution that was already running on the system. FreeBalance alleged that the CRA provided insufficient information for the sole-source justification and for the rejection of its statement of capabilities submitted in response to the Advance Contract Award Notice (ACAN).

The Tribunal found that the evidence disclosed that the CRA issued an ACAN and, in effect, evaluated FreeBalance’s statement of capabilities as if it were a proposal in response to a fully detailed RFP. In so doing, the CRA used the ACAN procedure to avoid a competitive process. Accordingly, the Tribunal found that the CRA conducted a limited tendering process that was not justified under Article 506(12) of the *AIT*, Article 1016(2) of *NAFTA*, Article XV(1) of the *AGP*, Article 9.1 of the *CCFTA* or Article 1409.1 of the *CPFTA*, or was not otherwise consistent with the trade agreements. The Tribunal concluded that the complaint was valid.

Judicial Review of Procurement Decisions

Decisions Appealed to the Federal Court of Appeal

File No.	Complainant Before the Tribunal	Applicant Before the Federal Court of Appeal	Court File No./Status
PR-2009-044 and PR-2009-045	1091847 Ontario Ltd.	1091847 Ontario Ltd.	A—447—09 Application discontinued (April 20, 2011)
PR-2009-080 to PR-2009-087, PR-2009-092 to PR-2009-099, PR-2009-101 and PR-2009-102, PR-2009-104 to PR-2009-107, PR-2009-109 to PR-2009-117, PR-2009-119 and PR-2009-120, and PR-2009-122 to PR-2009-128	Enterasys Networks of Canada Ltd.	Attorney General of Canada	A—264—10 Application allowed (June 20, 2011)
PR-2009-132 to PR-2009-153	Enterasys Networks of Canada Ltd.	Attorney General of Canada	A—312—10 Application allowed (June 20, 2011)
PR-2010-004 to PR-2010-006	Enterasys Networks of Canada Ltd.	Attorney General of Canada	A—321—10 Application allowed (June 20, 2011)
PR-2010-049, PR-2010-050 and PR-2010-056 to PR-2010-058	Siemens Enterprise Communications Inc.	Attorney General of Canada	A—39—11 (September 14, 2011)*
PR-2006-045R	Les Systèmes Equinox Inc.	Les Systèmes Equinox Inc.	A—246—11 Application dismissed (February 15, 2012)
PR-2010-090	Opsis, Gestion d'infrastructures Inc.	Opsis, Gestion d'infrastructures Inc.	A—253—11 Application dismissed (February 8, 2012)
PR-2010-086	Entreprise Marissa Inc.	Entreprise Marissa Inc.	A—298—11 Application discontinued (January 13, 2012)
PR-2011-007	Acklands-Grainger Inc.	Acklands-Grainger Inc.	A—387—11
PR-2011-031	Bell Canada	Bell Canada	A—397—11
PR-2011-009 and PR-2011-010	The Access Information Agency Inc.	The Access Information Agency Inc.	A—419—11
PR-2011-041	FreeBalance Inc.	Canada Revenue Agency	A—35—12 Application dismissed (February 15, 2012)
PR-2011-023	Almon Equipment Limited	Attorney General of Canada	A—45—12
PR-2011-022	Almon Equipment Limited	Attorney General of Canada	A—46—12

* The application was allowed in part in the case of three Requests for Volume Discounts and dismissed in the case of two Requests for Volume Discounts.

Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal usually does not participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.

Disposition of Procurement Complaints

File No.	Complainant	Status/Decision
PR-2009-080R to PR-2009-087R, PR-2009-092R to PR-2009-102R and PR-2009-104R to PR-2009-128R	Enterasys Networks of Canada Ltd.	Decision rendered on June 29, 2011 Complaints dismissed
PR-2009-132R to PR-2009-153R	Enterasys Networks of Canada Ltd.	Decision rendered on June 29, 2011 Complaints dismissed
PR-2010-004R to PR-2010-006R	Enterasys Networks of Canada Ltd.	Decision rendered on June 29, 2011 Complaints dismissed
PR-2010-049R, PR-2010-050R and PR-2010-058R	Enterasys Networks of Canada Ltd.	Decision rendered on September 30, 2011 Complaints dismissed
PR-2010-086	Entreprise Marissa Inc.	Decision issued on June 13, 2011 Complaint not valid
PR-2010-088	3056058 Canada Inc. o/a CLA Personnel	Decision issued on May 4, 2011 Complaint not valid
PR-2010-090	Opsis, Gestion d'infrastructures Inc.	Decision rendered on June 10, 2011 Complaint dismissed
PR-2010-094	Cauffiel Technologies Corporation	Decision made on April 5, 2011 No reasonable indication of a breach
PR-2011-001	A. Salari	Decision made on April 13, 2011 Not a designated contract
PR-2011-002	Tyco International of Canada o/a SimplexGrinnell	Decision made on April 14, 2011 No reasonable indication of a breach
PR-2011-003	Sanofi Pasteur Limited	Decision made on April 20, 2011 Complaint premature
PR-2011-004	D. Chaaban	Decision made on May 5, 2011 Not a designated contract
PR-2011-005	ArmorWorks Enterprises Canada, ULC	Decision made on May 10, 2011 Late filing
PR-2011-006	Sanofi Pasteur Limited	Decision made on May 12, 2011 No reasonable indication of a breach
PR-2011-007	Acklands-Grainger Inc.	Decision issued on September 19, 2011 Complaint not valid
PR-2011-008	Vector Aerospace Helicopter Services Inc.	Decision made on May 30, 2011 No reasonable indication of a breach
PR-2011-009	The Access Information Agency Inc.	Decision issued on October 17, 2011 Complaint not valid
PR-2011-010	The Access Information Agency Inc.	Decision issued on October 17, 2011 Complaint not valid
PR-2011-011	TA Instruments	Decision made on June 22, 2011 Late filing
PR-2011-012	Supremex Inc.	Decision made on June 22, 2011 No reasonable indication of a breach
PR-2011-013	Tyco International of Canada o/a SimplexGrinnell	Decision made on July 6, 2011 No reasonable indication of a breach
PR-2011-014	AdVenture Marketing Solutions Inc.	Decision made on July 14, 2011 No reasonable indication of a breach
PR-2011-015	141895 Canada Inc.	Decision made on July 13, 2011 No reasonable indication of a breach
PR-2011-016	Excel Human Resources Inc.	Complaint withdrawn on August 8, 2011
PR-2011-017	BRC Business Enterprises Ltd.	Decision issued on November 28, 2011 Complaint not valid

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2011-018	3775356 Canada Inc.	Decision made on August 15, 2011 No reasonable indication of a breach
PR-2011-019	3775356 Canada Inc.	Decision made on August 15, 2011 No reasonable indication of a breach
PR-2011-020	R.G.T. Cloutier Construction Ltd., H&H Construction Inc. and 902474 Ontario Inc., d.b.a. Do-All Construction	Decision made on August 22, 2011 Lack of jurisdiction
PR-2011-021	Daigen Communications	Decision made on August 23, 2011 No reasonable indication of a breach
PR-2011-022	Almon Equipment Limited	Decision issued on January 3, 2012 Complaint not valid
PR-2011-023	Almon Equipment Limited	Decision issued on January 3, 2012 Complaint not valid
PR-2011-024	The Masha Krupp Translation Group Limited	Decision made on August 25, 2011 No reasonable indication of a breach
PR-2011-025	Valley Associates Inc.	Decision made on August 30, 2011 Not a designated contract
PR-2011-026	Air Tindi Ltd.	Decision made on August 30, 2011 No reasonable indication of a breach
PR-2011-027	Dymech Engineering Inc.	Decision issued on December 2, 2011 Complaint not valid
PR-2011-028	723186 Alberta Ltd.	Decision made on September 12, 2011 No reasonable indication of a breach
PR-2011-029	TA Instruments	Decision made on September 15, 2011 Lack of jurisdiction
PR-2011-030	PA Consulting Group	Decision made on September 20, 2011 No reasonable indication of a breach
PR-2011-031	Bell Canada	Decision made on September 26, 2011 No reasonable indication of a breach
PR-2011-032	Almon Equipment Limited	Decision made on October 19, 2011 Late filing
PR-2011-033	Almon Equipment Limited	Decision made on October 19, 2011 Late filing
PR-2011-034	Dew Engineering and Development ULC	Decision made on October 4, 2011 Complaint premature
PR-2011-035	Grass Roots Aviation Environmental Products	Complaint abandoned while filing
PR-2011-036	ADRM Technology Consulting Group Corp.	Complaint withdrawn on November 14, 2011
PR-2011-037	Ball Harrison Hansell Employee Benefits Insurance Agency Ltd.	Decision made on October 18, 2011 Lack of jurisdiction
PR-2011-038	Teledyne Webb Research, a business unit of Teledyne Benthos, Inc.	Decision made on October 20, 2011 No reasonable indication of a breach
PR-2011-039	FreeBalance Inc.	Decision made on October 20, 2011 Complaint premature
PR-2011-040	Avaya Canada Corp.	Decision made on October 26, 2011 Lack of jurisdiction
PR-2011-041	FreeBalance Inc.	Decision issued on January 24, 2012 Complaint valid
PR-2011-042	Consortium Genivar—Centre for Asia-Pacific Initiatives	Decision made on November 10, 2011 Late filing
PR-2011-043	Excel Human Resources Inc.	Decision issued on March 2, 2012 Complaint not valid
PR-2011-044	Deloitte & Touche LLP	Complaint withdrawn on March 29, 2012
PR-2011-045	Marathon Watch Company Ltd.	Decision made on December 22, 2011 Not a potential supplier

Disposition of Procurement Complaints (cont'd)

File No.	Complainant	Status/Decision
PR-2011-046	Marathon Watch Company Ltd.	Decision made on December 22, 2011 Not a potential supplier
PR-2011-047	Systematix IT Solutions Inc.	Decision made on December 29, 2011 Complaint premature
PR-2011-048	Marathon Watch Company Ltd.	Decision made on December 30, 2011 Not a potential supplier
PR-2011-049	E.G. Spence Residential, Commercial and Industrial Maintenance and Construction	Accepted for inquiry
PR-2011-050	Israel Military Industries Ltd.	Decision made on February 10, 2012 Not a designated contract
PR-2011-051	CORADIX Technology Consulting Ltd.	Decision made on February 20, 2012 Late filing
PR-2011-052	APM Diesel 1992 Inc.	Decision made on February 15, 2012 Late filing
PR-2011-053	Service d'entretien JDH Inc.	Accepted for inquiry
PR-2011-054	Kanter Marine Inc.	Decision made on February 21, 2012 No reasonable indication of a breach
PR-2011-055	The Masha Krupp Translation Group Limited	Decision made on March 2, 2012 Complaint premature
PR-2011-056	Brains II Canada Inc.	Decision made on March 15, 2012 Late filing
PR-2011-057	Exocortex Technologies Inc.	Decision made on March 7, 2012 Late filing
PR-2011-058	Ernst & Young LLP	Complaint withdrawn on March 29, 2012
PR-2011-059	Intergage Consulting Group Inc.	Decision made on March 16, 2012 Late filing
PR-2011-060	Stonehaven Productions Inc.	Decision made on March 16, 2012 Late filing
PR-2011-061	The Masha Krupp Translation Group Limited	Under consideration
PR-2011-062	Secure Computing LLC	Decision made on March 29, 2012 Decision and reasons to be issued in next fiscal year



CHAPTER V

APPEALS

Introduction

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

The appeal process is set in motion when a written notice of appeal is filed with the Secretary of the Tribunal within the time limit specified in the act under which the appeal is made. The Tribunal strives to be informal and accessible. However, there are certain procedures and time constraints that are imposed by law and by the *Rules*.

Rules

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 and procedural constraints. 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 Secretary of the Tribunal then contacts both parties in order to schedule a hearing. 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 precedential nature 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, 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 of justice, 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.

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 President of the CBSA. Such an application may be granted by the Tribunal after either the President has refused an application under section 60.1 or 90 days have elapsed after the application was made and the person has not been notified of the President's decision. Under section 67.1, a person may make an application 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 seven orders under the *Customs Act*, granting extensions of time in five cases and denying the applications in two cases. There were four requests under the *Customs Act* that were outstanding 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 issued one order under the *Excise Tax Act* granting an extension of time. There were three requests under the *Excise Tax Act* that were outstanding at the end of the fiscal year.

Appeals Received and Heard

During the fiscal year, the Tribunal received 76 appeals, not counting an appeal that was received on remand from the Federal Court of Appeal for decision. The Tribunal heard 40 appeals, 36 of which were under the *Customs Act* and 4 under *SIMA*. It issued decisions on 35 appeals, which consisted of 33 appeals under the *Customs Act* (including a remanded case) and 2 under *SIMA*. Ninety-four appeal cases were outstanding at the end of the fiscal year.

Appeals Before the Tribunal in Fiscal Year

Appeal No.	Appellant	Date of Decision	Status/Decision
<i>Customs Act</i>			
AP-2008-012R	P.L. Light Systems Canada	November 4, 2011	Appeal allowed
AP-2009-080R	M. Miner		In progress
AP-2009-008	Wolseley Canada Inc.	April 29, 2011	Appeal withdrawn
AP-2009-014	Transport Desgagnés Inc.		In progress
AP-2009-017	Nutricia North America	May 18, 2011	Appeal dismissed
AP-2009-046	Igloo Vikski Inc.		Postponed
AP-2009-064	Pexcor Manufacturing Company Ltd.		Postponed
AP-2009-065	Mathews Equipment Limited		Postponed
AP-2009-066	Danson Decor Inc.	May 27, 2011	Appeal allowed
AP-2009-067	Norcan Petroleum Inc.	February 23, 2012	Appeal withdrawn
AP-2009-078	Disco-Tech Industries Inc.	August 11, 2011	Appeal dismissed
AP-2009-081	Disco-Tech Industries Inc.	July 7, 2011	Appeal dismissed
AP-2010-002	Frito-Lay Canada, Inc.		In progress
AP-2010-005	HBC Imports c/o Zellers Inc.	April 6, 2011	Appeal dismissed
AP-2010-006	Komatsu International (Canada) Inc.		In progress
AP-2010-011	GCP Elastomeric Inc.	April 4, 2011	Appeal dismissed
AP-2010-014	Massive Prints, Inc.	April 27, 2011	Appeal dismissed
AP-2010-016	R. A. Hayes	June 15, 2011	Appeal dismissed
AP-2010-019	HBC Imports c/o Zellers Inc.	April 6, 2011	Appeal allowed
AP-2010-022	Loblaw Companies Limited	August 3, 2011	Appeal allowed
AP-2010-024	Ulextra Inc.	June 15, 2011	Appeal dismissed
AP-2010-025	Masai Canada Limited	August 5, 2011	Appeal allowed
AP-2010-026	Superior Glove Works Limited	December 13, 2011	Appeal withdrawn
AP-2010-027	Kinedyne Canada Limited	July 5, 2011	Appeal dismissed
AP-2010-029	Terralink Horticulture Inc.	April 27, 2011	Appeal withdrawn
AP-2010-032	Wellmaster Pipe and Supply Inc.	June 7, 2011	Appeal withdrawn
AP-2010-033	Contech Holdings Canada Inc.		In progress
AP-2010-035	Wal-Mart Canada Corporation	June 13, 2011	Appeal dismissed
AP-2010-036	Accessoires Sportracks Inc. de Thule Canada Inc.	January 13, 2012	Appeal dismissed
AP-2010-037	Great West Van Conversions Inc.	November 30, 2011	Appeal allowed
AP-2010-040	Équipement Loadmaster Ltée	June 1, 2011	Appeal withdrawn
AP-2010-041	Royal Canadian Mint		In progress
AP-2010-042	Contech Holdings Canada Inc.		In progress
AP-2010-043	Canadian Tire Corporation Ltd.	April 15, 2011	Appeal withdrawn
AP-2010-046	VGI Village Green Imports	January 12, 2012	Appeal dismissed

Appeals Before the Tribunal in Fiscal Year (cont'd)

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2010-047	Triple E Canada Ltd.		Postponed
AP-2010-048	Pleasure-Way Industries Ltd.		Postponed
AP-2010-049	Leisure Travel Vanx (1999) Ltd.		Postponed
AP-2010-052	H. A. Kidd and Company Limited	September 1, 2011	Appeal allowed
AP-2010-053	North American Tea & Coffee Inc.	May 9, 2011	Appeal withdrawn
AP-2010-054	Yamaha Canada Music Ltd.	November 29, 2011	Appeal withdrawn
AP-2010-055	Tyco Safety Products Canada Ltd. (formerly Digital Security Controls Ltd.)	September 8, 2011	Appeal allowed in part
AP-2010-056	Dole Foods of Canada Ltd.	May 24, 2011	Appeal withdrawn
AP-2010-057	RLogistics LP	October 25, 2011	Appeal allowed
AP-2010-058	9133-7048 Quebec Inc.	October 6, 2011	Appeal dismissed
AP-2010-059	Dollarama S.E.C.	October 24, 2011	Appeal withdrawn
AP-2010-060	Outdoor Gear Canada	November 21, 2011	Appeal dismissed
AP-2010-061	M. Farid	August 10, 2011	Appeal withdrawn
AP-2010-062	Irwin Naturals		Postponed
AP-2010-064	Automed Technologies (Canada) Inc.	November 29, 2011	Appeal dismissed
AP-2010-065	Beckman Coulter Canada Inc.	January 17, 2012	Appeal allowed
AP-2010-066	CE Franklin Ltd.	December 21, 2011	Appeal allowed
AP-2010-067	R. Falk	June 2, 2011	Appeal withdrawn
AP-2010-068	Kwality Imports		In progress
AP-2010-069	Canadian Tire Corporation Limited	November 23, 2011	Appeal allowed
AP-2010-070	Cambridge Brass Inc.	December 7, 2011	Appeal dismissed
AP-2011-001	Stampin' Up! Canada ULC	September 26, 2011	Appeal withdrawn
AP-2011-002	Danson Décor Inc.	May 9, 2011	Appeal withdrawn
AP-2011-003	Abricot International Inc.		Postponed
AP-2011-005	2148798 Ontario Limited	December 30, 2011	Appeal withdrawn
AP-2011-006	ITT Water & Wastewater Canada	November 8, 2011	Appeal withdrawn
AP-2011-007	A. Santos	July 22, 2011	Appeal withdrawn
AP-2011-008	Jockey Canada Company		In progress
AP-2011-009	Costco Wholesales Canada Limited	January 19, 2012	Appeal allowed
AP-2011-010	Commonwealth Wholesale Corp.	February 13, 2012	Appeal allowed
AP-2011-011	Bauer Hockey Corporation		In progress
AP-2011-012	R. Joschko	December 14, 2011	Appeal dismissed
AP-2011-013	KSB Pumps Inc. (Canada)	March 29, 2012	Appeal allowed
AP-2011-014	De Ronde Tire Supply, Inc.		In progress
AP-2011-016	Abricot International Inc.		Postponed
AP-2011-017	Pharma K.D. Inc.	July 8, 2011	Appeal withdrawn
AP-2011-018	HBC Imports c/o Zellers Inc.		In progress
AP-2011-019	Commonwealth Wholesale Corp.	February 13, 2012	Appeal allowed
AP-2011-020	Canadian Tire Corporation Limited		In progress
AP-2011-021	Performance Steel Specialties Inc.		In progress
AP-2011-022	Amco Produce Inc.	July 27, 2011	File closed
AP-2011-023	Curve Distribution Services		In progress
AP-2011-024	Canadian Tire Corporation Limited		In progress
AP-2011-025	Abricot International Inc.		Postponed

Appeals Before the Tribunal in Fiscal Year (cont'd)

Appeal No.	Appellant	Date of Decision	Status/Decision
AP-2011-026	Maurice Sporting Goods Distributor Inc.	January 30, 2012	Appeal withdrawn
AP-2011-028	A.H. McElroy Sales & Service (Canada) Ltd.	March 23, 2012	Appeal withdrawn
AP-2011-029	Elfe Juvenile Products		In progress
AP-2011-030	Grodan Inc.		In progress
AP-2011-031	Grodan Inc.		In progress
AP-2011-032	IC Companys Canada Inc.		Postponed
AP-2011-033	Costco Wholesale Canada Ltd.		Postponed
AP-2011-034	Heidelberg Canada Graphic Equipment Limited		Postponed
AP-2011-035	Ultravar Ltd.	December 7, 2011	Appeal withdrawn
AP-2011-036	J. Pouliot	November 25, 2011	Appeal withdrawn
AP-2011-037	Densigraphix Kopi Inc.		Postponed
AP-2011-038	Samona International	February 17, 2012	Appeal withdrawn
AP-2011-040	La Sagesse de l'eau		In progress
AP-2011-041	La Sagesse de l'eau		In progress
AP-2011-042	Philips Electronics Ltd.		In progress
AP-2011-043	Costco Wholesale Canada Ltd.		In progress
AP-2011-046	J.E. Mondou Ltée	January 13, 2012	Appeal withdrawn
AP-2011-047	Lallemand Inc.		In progress
AP-2011-048	CP Regional Power Services Limited Partnership		In progress
AP-2011-049	Cycles Lambert Inc.		In progress
AP-2011-050	Cherry Stix Ltd.		In progress
AP-2011-051	Lever Arms Service Ltd.		Postponed
AP-2011-052	Winners Merchants International		In progress
AP-2011-053	Distx M & M Inc.	February 21, 2012	Appeal withdrawn
AP-2011-055	Monterra Lumber Mills, Ltd.		In progress
AP-2011-056	George Courey Inc.		In progress
AP-2011-057	Manmen Énergie Inc.		In progress
AP-2011-058	Marmen Inc.		In progress
AP-2011-059	Outdoor Gear Canada		Postponed
AP-2011-060	Cycles Lambert Inc.		In progress
AP-2011-061	Starkey Labs Canada Co.		In progress
AP-2011-063	Casio Canada Ltd.		In progress
AP-2011-064	Sunbeam Corporation (Canada) Limited	February 15, 2012	Appeal withdrawn
AP-2011-065	Proctor-Silex Canada		In progress
AP-2011-066	Fort Garry Industries Ltd.		In progress
AP-2011-067	S. F. Marketing Inc.		In progress
AP-2011-070	Robert Bosch Inc.		In progress
AP-2011-071	Outdoor Gear Canada		Postponed
AP-2011-072	FMC Technologies Company		In progress
AP-2011-074	Coming Cable Systems LLC		In progress
AP-2011-075	Jan K. Overweel Limited		In progress
AP-2011-076	Coming Cable Systems LLC		In progress

Appeals Before the Tribunal in Fiscal Year (cont'd)

Appeal No.	Appellant	Date of Decision	Status/Decision
<i>Excise Tax Act</i>			
AP-2009-020	Laidlaw Carriers PSC Inc.		Postponed
AP-2009-021	Laidlaw Carriers Bulk GP Inc.		Postponed
AP-2009-022	Laidlaw Carriers Van GP Inc.		Postponed
AP-2009-023	Laidlaw Carriers Flatbed GP Inc.		Postponed
AP-2009-024	Transnat Express Inc.		In progress
AP-2009-025	Golden Eagle Express Inc.		Postponed
AP-2009-026	Le Groupe G3 Inc.		Postponed
AP-2009-027	Vedder Transport Ltd.		Postponed
AP-2009-028	Warren Gibson Ltd.		Postponed
AP-2009-029	2810026 Canada Ltd.		Postponed
AP-2009-030	Warren Gibson Ltd.		Postponed
AP-2009-031	Q-Line Trucking Ltd.		Postponed
AP-2009-032	GST 2000 Inc.		Postponed
AP-2009-033	J & F Trucking Corporation		Postponed
AP-2009-034	Reimer Express Lines Ltd.		Postponed
AP-2009-035	Celadon Canada Inc.		Postponed
AP-2009-036	Cobra Trucking Ltd.		Postponed
AP-2009-037	MotruX Inc.		Postponed
AP-2009-038	L.E. Walker Transport Ltd.		Postponed
AP-2009-039	Distribution Marcel Dion Inc.		Postponed
AP-2009-040	Reimer Express Lines Ltd.		Postponed
AP-2009-041	Direct Integrated Transportation		Postponed
AP-2009-042	Harris Transport Ltd.		Postponed
AP-2009-043	Benson Tank Lines Ltd.		Postponed
AP-2011-054	United Independent Energy Group Inc.		In progress
AP-2011-062	Fonds d'emprunt communautaire GIM		Postponed
AP-2011-068	81794 Canada Limited/Liquiterminals Ltd.		In progress
AP-2011-069	Tank Truck Transport Inc.		In progress
<i>Special Import Measures Act</i>			
AP-2010-018	Amcan Jumax Inc.	April 18, 2011	Appeal withdrawn
AP-2010-039	BMI Canada Inc.	August 2, 2011	Appeal dismissed
AP-2010-063	Toyota Tshusho America, Inc.	November 18, 2011	Appeal dismissed
AP-2011-004	Canadian Tire Corporation, Limited	November 30, 2011	Appeal withdrawn
AP-2011-015	Levolor Home Fashions Canada		In progress
AP-2011-027	Aluminart Products Limited		In progress
AP-2011-039	United Wood Frames Inc.		In progress
AP-2011-044	Anchorman Fasteners Ltd.		In progress
AP-2011-045	Ucan Fastening Products		In progress
AP-2011-073	Peak Products Manufacturing Inc.		In progress

Summary of Selected Decisions

Of the many cases heard by the Tribunal, several decisions stand out, either because of the particular nature of the product in issue or because of the legal significance of the case. Specifically, there are three main categories of appeals under the *Customs Act*: tariff classification, value for duty and rules of origin. Brief summaries of a representative sample of such decisions follow, two appeals having been heard pursuant to the *Customs Act* and one pursuant to *SIMA*. These summaries have been prepared for general information purposes only and are intended to be of no legal value.

AP-2010-063—Toyota Tsusho America, Inc. v. President of the Canada Border Services Agency

As part of this appeal, the Tribunal held a two-day public hearing in Ottawa. There were 2 participants in the appeal, and 5 witnesses appeared before the Tribunal. The official record consisted of 35 exhibits.

This was an appeal pursuant to subsection 61(1) of *SIMA* from decisions made pursuant to section 59 concerning the assessment of anti-dumping duties on imports of hot-rolled steel plate containing a minute quantity of boron. The issue in this appeal was whether the goods constituted carbon steel plate and were therefore goods of the same description as the goods to which the Tribunal's order in Expiry Review No. RR-2007-001 (the Order) applied.

The case turned on whether the minute quantity of boron in the goods made them alloy steel instead of carbon steel. Toyota Tsusho America, Inc. (Toyota Tsusho) argued that the goods were alloy steel largely because of the fact that steel with similar quantities of boron were classified in heading No. 72.25 of the schedule to the *Customs Tariff* as “[f]lat-rolled products of other alloy steel”. Toyota Tsusho also relied on the opinion of an expert in materials science and metallurgical engineering from the University of Toronto. This expert testified that, in his opinion, steel with such quantities of boron are considered alloy steel according to steel industry standards. The CBSA relied on the expert testimony of a steel metallurgist who interpreted the steel industry standards as implying that the goods at issue were carbon steel.

The Tribunal acknowledged that the goods were classifiable as alloy steel, but held that tariff classification was not determinative in this case. Rather, it was the description of the goods in the Order that was determinative of whether imported goods should be subject to anti-dumping duties. Therefore, the Tribunal carefully examined the steel industry standards and the expert evidence. On the balance of the evidence, the Tribunal concluded that, at the time of importation, the goods were carbon steel. Therefore, the appeal was dismissed.

AP-2010-060—Outdoor Gear Canada v. President of the Canada Border Services Agency

As part of this appeal, the Tribunal held a half-day public hearing in Ottawa. There were 2 participants in the appeal, and 1 witness appeared before the Tribunal. The official record consisted of 17 exhibits.

This was an appeal pursuant to subsection 67(1) of the *Customs Act* from decisions of the CBSA made pursuant to subsection 60(4) concerning the tariff classification of assembled bicycle rims, spokes and hubs, without tubes, valves, nipples or tires. The issue in this appeal was whether the goods were properly classified under tariff item No. 8714.99.10 of the schedule to the *Customs Tariff* as bicycle wheels, as determined by the CBSA, or should have been classified under tariff item No. 8714.99.90 as other parts and accessories of vehicles of heading Nos. 87.11 to 87.13 (i.e. bicycles), as claimed by Outdoor Gear Canada (Outdoor Gear).

The CBSA argued that the goods were bicycle wheels because there was nothing in tariff item No. 8714.99.10 that limited the meaning of the term “bicycle wheels” to bicycle wheels with tires and tubes, and the goods were known as bicycle wheels in the bicycle industry.

Outdoor Gear based its position on the argument that the term “bicycle wheels” was ambiguous and that, therefore, the tariff items should be interpreted in its favour. Outdoor Gear also argued that the term “bicycle wheels” implicitly referred to bicycle wheels fitted with tires and tubes. It further argued that, without tubes, valves and tires, the goods in issue lacked several of the essential features of a bicycle wheel.

The Tribunal considered both the ordinary meaning of the term “bicycle wheel” and the meaning of that term in the bicycle industry. The Tribunal observed that dictionary definitions of “wheel” referred to the hub and spokes, but not to tires and tubes. The Tribunal also noted that Outdoor Gear’s own witness admitted that the term was understood in the industry as including both complete and incomplete bicycle wheels and that the goods in issue were marketed as “bicycle wheels”. Therefore, the appeal was dismissed.

AP-2010-065—Beckman Coulter Canada Inc. v. President of the Canada Border Services Agency

As part of this appeal, the Tribunal held a one-day public hearing in Ottawa. There were 2 participants in the appeal, and 1 witness appeared before the Tribunal. The official record consisted of 9 exhibits.

This was an appeal pursuant to subsection 67(1) of the *Customs Act* from a decision of the CBSA made pursuant to subsection 60(4) with respect to a request for review of an advance ruling on tariff classification. The issue in this appeal was whether Polyflex[®] V-belts were eligible to benefit from duty-free treatment under tariff item No. 9977.00.00 of the schedule to the *Customs Tariff* as articles for use in appliances used in medical sciences, as claimed by Beckman Coulter Canada Inc. (Beckman Coulter).

The parties agreed that the goods were “articles”, but disagreed on whether they were for use in appliances used in medical sciences. Beckman Coulter argued that the goods were “for use in appliances used in medical sciences” because they were incorporated into centrifuges. The CBSA admitted that the goods were incorporated into centrifuges, but relied on the fact that they could also serve in other applications.

The Tribunal found that the goods were in fact incorporated into the centrifuges and therefore were “for use in” them. The Tribunal also found that the centrifuges were “appliances used in medical sciences”, considering they satisfied the dictionary definition of “appliance”, and that there was evidence that they were designed for the market comprising customers such as Canadian Blood Services. Therefore, the appeal was allowed.

Appeal Cases Before the Federal Court of Appeal or the Federal Court

Appeal No.	Appellant Before the Tribunal	Appellant Before the Court	File No./Status
AP-2009-010	Wolseley Engineered Pipe Group	Wolseley Engineered Pipe Group	A—223—10 Appeal dismissed (April 15, 2011)
AP-2009-005	Les pièces d'auto Transit Inc.	Les pièces d'auto Transit Inc.	A—291—10 Appeal dismissed (October 11, 2011)
AP-2010-007 and AP-2010-008	C.B. Powell Limited	C.B. Powell Limited	A—314—10 Appeal dismissed (April 15, 2011)
AP-2009-019	Canadian Tire Corporation Limited	Canadian Tire Corporation Limited	A—324—10 Appeal dismissed (September 6, 2011)
AP-2009-016	Tara Materials, Inc.	Tara Materials, Inc.	A—389—10 Appeal dismissed (October 25, 2011)
AP-2007-024	1068827 Ontario Inc. o/a Grace Motors	1068827 Ontario Inc. o/a Grace Motors	A—66—11 Appeal dismissed (November 8, 2011)
AP-2009-045	Sher-Wood Hockey Inc.	Sher-Wood Hockey Inc.	A—167—11 Appeal discontinued (October 31, 2011)
AP-2009-080	M. Miner	President of the Canada Border Services Agency	A—168—11 Appeal allowed (March 9, 2012)
AP-2010-003	Riu Royal International Corp.	Riu Royal International Corp.	A—229—11 Appeal discontinued (October 28, 2011)
AP-2009-081	Disco-Tech Industries, Inc.	Disco-Tech Industries, Inc.	A—392—11
AP-2010-025	Masai Canada Limited	President of the Canada Border Services Agency	A—418—11
EP-2011-002	Volpak Inc.	Volpak Inc.	A—51—12

Note: The Tribunal has made reasonable efforts to ensure that the information listed is complete. However, since the Tribunal does not always participate in appeals to the Federal Court of Appeal or the Federal Court, it is unable to confirm that the list contains all appeals or decisions rendered that were before the Federal Court of Appeal and the Federal Court.



CHAPTER VI

STANDING TEXTILE REFERENCE

Introduction

Pursuant to a reference from the Minister of Finance dated July 6, 1994, as last amended on October 27, 2005, the Tribunal is 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.

The terms of reference call for the Tribunal to report annually to the Minister of Finance on the investigation process. This chapter reports on the Tribunal's activities under the textile reference.

During fiscal year 2011-2012, the Tribunal received no requests for tariff relief and did not issue any reports to the Minister of Finance.

Scope of the Reference

A domestic producer may apply for tariff relief on an imported textile input used, or proposed to be used, in its manufacturing operations. The textile inputs on which tariff relief may be requested are the fibres, yarns and fabrics of Chapters 51, 52, 53, 54, 55, 56, 58, 59 and 60 of the schedule to the *Customs Tariff*; certain monofilaments or strips and textile and plastic combinations of Chapter 39; rubber thread and textile and rubber combinations of Chapter 40; and products of textile glass fibres of Chapter 70. The following yarns are not included in the textile reference:

Knitting yarns, solely of cotton or solely of cotton and polyester staple fibres, measuring more than 190 decitex, of Chapter 52 or subheading No. 5509.53 other than those used to make sweaters, having a horizontal self-starting finished edge and the outer surfaces of which are constructed essentially with 9 or fewer stitches per 2 centimetres (12 or fewer stitches per inch) measured in the horizontal direction.

Types of Relief Available

The tariff relief that may be recommended by the Tribunal to the Minister of Finance ranges from the removal or reduction of tariffs on one or several partial or complete tariff lines, textile- and/or end-use-specific tariff provisions. Except for exceptional circumstances, recommendations are not to include a gender-specific “end use”. The recommendation could be for tariff relief for either a specific or an indeterminate period of time.

Process

Domestic producers seeking tariff relief must file a request with the Tribunal. Along with their request, producers must file either samples of the textile input for which tariff relief is being sought or a National Customs Ruling from the CBSA covering the input. If the Tribunal determines that the request is properly documented, it will conduct an investigation to determine if it should recommend tariff relief.

Filing and Notification of a Request

Upon receipt of a request for tariff relief, and before commencement of an investigation, the Tribunal issues a brief electronic notice on its Web site announcing the request. The minimum period of time for the notification of a request before the start of an investigation is 30 days.

This notification is designed to increase transparency, identify potential deficiencies in the request, avoid unnecessary investigations, provide an opportunity for the domestic textile industry to contact the requester and agree on a reasonable domestic source of supply, inform other users of identical or substitutable textile inputs, prepare the domestic industry to respond to subsequent investigation questionnaires and give associations advance time for planning and consultation with their members.

Investigations

When the Tribunal is satisfied that a request is properly documented, it commences an investigation. A notice of commencement of investigation is sent to the requester, all known interested parties and any appropriate government department or agency, such as the Department of Foreign Affairs and International Trade, the Department of Industry, the Department of Finance and the CBSA. The notice is also published in the *Canada Gazette*.

Interested parties include all persons whose rights or pecuniary interests may be affected by the Tribunal’s recommendations. Interested parties are given notice of the request and can participate in the investigation.

To prepare a staff investigation report, the Tribunal’s staff gathers information through such means as questionnaires and plant visits. Information is obtained from the requester and interested parties to determine whether the tariff relief sought will maximize net economic gains for Canada.

In most cases, a public hearing is not required and the Tribunal will dispose of the matter on the basis of written submissions, including the request, the staff investigation report and all submissions and evidence filed with the Tribunal. In cases where the written record is not sufficient to dispose of the matter, a public hearing is held.

The procedures for the conduct of the Tribunal's investigation envisage the full participation of the requester and all interested parties. A party, other than the requester, may file submissions, including evidence, in response to the properly documented request, the staff investigation report and any information provided by a government department or agency. The requester may subsequently file submissions with the Tribunal in response to the staff investigation report and any information provided by a government department, agency or other party.

Recommendations to the Minister of Finance

The Tribunal will normally issue its recommendations, with reasons, to the Minister of Finance within 100 days from the date of commencement of the investigation. In exceptional cases, where the Tribunal determines that critical circumstances exist, it will issue its recommendations within an earlier specified time frame.

Request for Review

Where the Minister of Finance has made an order for tariff relief pursuant to a recommendation of the Tribunal, certain domestic producers may ask the Tribunal to commence an investigation for the purpose of recommending the renewal, amendment or termination of the order. A request for the amendment or termination of the order should specify what changed circumstances justify the request.

Review on Expiry

Where the Minister of Finance has made an order for tariff relief subject to a scheduled expiry date, the Tribunal will, before the expiry date, issue a formal notice that the tariff relief provided by the order will expire unless the Tribunal issues a recommendation that tariff relief should be continued and the Minister of Finance implements the recommendation. The notice invites interested parties to file submissions for or against the continuation of tariff relief.

Summary of Activities

New Requests

	2010-2011	2011-2012
Requests		
Received	-	-
Withdrawn	-	-
Awaiting the initiation of an investigation	-	-
Investigations completed during the fiscal year	-	-
Investigations in progress at end of the fiscal year	-	-
Recommendations to the Minister of Finance		
Tariff relief	-	-
No tariff relief	-	-
Reports to the Minister of Finance	-	-
Cumulative totals (since 1994)		
Requests received	187	187
Recommendations to the Minister of Finance		
Tariff relief	115	115
No tariff relief	49	49

Effects

The implementation of Tribunal recommendations is made by adding new tariff items to the *Customs Tariff* or, occasionally, by issuing specific customs duty remission orders. The table at the end of this chapter provides a list of the recommendations implemented by the Government as of December 31, 2011.

It should be noted that some of the tariff items in the list differ from the tariff items as they were originally enacted to give effect to the Tribunal's recommendations under the standing textile reference. First, on November 21, 2005, as part of its implementation of the recommendations made by the Tribunal in Reference No. MN-2004-002, the Government put in place a new tariff structure that created a number of duty-free tariff items. In instances where these broader duty-free tariff items covered products that were already provided duty-free treatment by individual tariff items implemented under the standing textile reference, the latter individual tariff items were deleted from the *Customs Tariff*. Second, on December 13, 2006, at the same time as it implemented the Tribunal's recommendations in Reference No. MN-2005-001, the Government further modified the tariff structure to eliminate additional tariff items and to amend the existing wording to remove additional gender-specific or product-specific end-use requirements. Third, amendments to the *Customs Tariff* came into effect on January 1, 2007, to implement updates to the *Harmonized Commodity Description and Coding System* by the World Customs Organization.

For the period from January 1 to December 31, 2011, the Tribunal estimates that the tariff items listed in the table at the end of this chapter covered imports worth about \$174 million and provided tariff relief worth about \$4.4 million. For the comparable period in 2010, these amounts were about \$170 million and about \$5.4 million respectively. The decrease in the value of tariff relief in 2011 is reflective of the further reductions in the Most-Favoured-Nation rate of duty for many of the broader tariff items from which the tariff items listed in the table at the end of this chapter were originally taken.

As stated earlier, textile inputs on which tariff relief may be requested are limited to 12 chapters of the *Customs Tariff*. From January 1 to December 31, 2011, tariff relief principally affected textile inputs falling in three chapters: Chapter 51 ("Wool, fine or coarse animal hair; horsehair yarn and woven fabric"); Chapter 52 ("Cotton"); and Chapter 54 ("Man-made filaments; strip and the like of man-made textile materials"). The percentage of total imports accounted for by the imports benefiting from tariff relief, falling in these 12 chapters, ranged from 0 to 38.41 percent. Overall, approximately 0.66 percent of total imports falling in the 12 chapters benefit from tariff relief. The following table provides, for calendar year 2011, a distribution of the imports benefiting from tariff relief, by *Customs Tariff* chapter.

Percentage of Imports Benefiting From Tariff Relief by Customs Tariff Chapter

Chapter	Description	Percentage
39	Plastics and articles thereof	-
40	Rubber and articles thereof	-
51	Wool, fine or coarse animal hair; horsehair yarn and woven fabric	38.41
52	Cotton	8.58
53	Other vegetable textile fibres; paper yarn and woven fabrics of paper yarn	3.67
54	Man-made filaments; strip and the like of man-made textile materials	11.57
55	Man-made staple fibres	4.61
56	Wadding, felt and nonwovens; special yarns; twine, cordage, ropes and cables and articles thereof	0.53
58	Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery	0.57
59	Impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use	7.32
60	Knitted or crocheted fabrics	0.71
70	Glass and glassware	0.08
Weighted average		0.66

Source: Statistics Canada

Tariff Relief Recommendations in Place

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2011
TR-94-001		Canatex Industries (Division of Richelieu Knitting Inc.)	5402.45.00 ³
TR-94-004		Woods Canada Limited	5208.52.30
TR-94-010		Palliser Furniture Ltd.	5806.20.10
TR-94-012		Peerless Clothing Inc.	5309.29.30 ¹
TR-94-013 and TR-94-016		MWG Apparel Corp.	5208.42.91 ¹ 5208.43.70 ¹ 5208.49.91 ¹ 5513.31.20 ¹ 5513.39.11 ³
TR-94-017 and TR-94-018		Elite Counter & Supplies	9943.00.00
TR-95-003		Landes Canada Inc.	5603.11.20 5603.12.20 5603.13.20 5603.14.20 5603.91.20 5603.92.20 5603.93.20 5603.94.20
TR-95-004		Lingerie Bright Sleepwear (1991) Inc.	5208.12.20 ² 5208.52.20 ²
TR-95-005		Lingerie Bright Sleepwear (1991) Inc.	5513.11.91 ¹ 5513.41.10 ²

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2011
TR-95-009		Peerless Clothing Inc.	5408.21.40 ¹ 5408.22.23 ¹ 5408.22.91 ¹
TR-95-010 and TR-95-034		Freed & Freed International Ltd. and Fen-nelli Fashions Inc.	5111.19.10 5111.19.20
TR-95-011		Louben Sportswear Inc.	5408.31.40 ¹ 5408.32.60 ¹
TR-95-012		Perfect Dyeing Canada Inc.	5509.32.10
TR-95-013A		Doubletex	5208.11.00 ¹ 5208.12.40 5208.13.20 5208.19.30 5208.21.40 5208.22.20 5208.23.10 5208.29.20 5209.11.30 5209.12.20 5209.19.30 5209.21.20 5209.22.10 5209.29.20
TR-95-036		Canadian Mill Supply Co. Ltd.	5208.21.20
TR-95-037		Paris Star Knitting Mills Inc.	5408.24.12 ¹ 5408.24.92 ¹ 5408.34.30 ¹ 5516.14.20 ¹ 5516.24.10 ²
TR-95-051		Camp Mate Limited	5407.41.10 5407.42.10 5407.42.20 5903.20.22
TR-95-053 and TR-95-059		Majestic Industries (Canada) Ltd. and Caulfeild Apparel Group Ltd.	5802.11.20 ¹ 5802.19.40 ¹
TR-95-056		Sealy Canada Ltd.	3921.19.20 5407.69.30 5407.73.10 5407.94.10 5516.23.10 5903.90.25 6005.34.20
TR-95-057 and TR-95-058		Doubletex	5407.51.10 5407.61.96 5407.69.10 5515.11.10 5516.21.10 5516.91.10
TR-95-060		Triple M Fiberglass Mfg. Ltd.	7019.59.10
TR-95-061		Camp Mate Limited	6005.31.20 6005.32.20 6005.33.20 6005.34.30
TR-95-064 and TR-95-065		Lady Americana Sleep Products Inc. and el ran Furniture Ltd.	6005.34.60 6005.44.20
TR-96-003		Venture III Industries Inc.	5407.61.95 ²
TR-96-004		Acton International Inc.	5906.99.21

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2011
TR-97-001		Jones Apparel Group Canada Inc.	5407.91.10 ² 5407.92.20 ² 5407.93.10 ² 5408.21.40 ¹ 5408.22.91 ¹ 5408.23.91 ¹ 5408.31.40 ¹ 5408.32.60 ¹ 5408.33.30 ¹
TR-97-002 and TR-97-003		Universal Manufacturing Inc.	5208.43.70 ¹ 5513.41.20 ²
TR-97-006		Peerless Clothing Inc.	5407.51.30 ² 5903.90.22 ² 5903.90.23 ² 5903.90.24 ² 6005.31.30 ² 6005.31.40 ² 6005.32.30 ² 6005.32.40 ² 6005.33.91 ¹ 6005.34.40 ² 6005.34.50 ²
TR-97-004, TR-97-007, TR-97-008 and TR-97-010		Blue Bird Dress of Toronto Ltd.	5407.51.20 5407.52.20 5407.61.94 5407.69.20
TR-97-011		Australian Outback Collection (Canada) Ltd.	5209.31.20 5907.00.16
TR-97-012		Ballin Inc.	5407.93.30 5516.23.91 ²
TR-97-014		Lenrod Industries Ltd.	5603.93.40
TR-97-015, TR-97-016 and TR-97-020		Helly Hansen Canada Ltd.	5903.20.24
TR-98-001		Cambridge Industries	5608.19.20
TR-98-002		Distex Inc.	6006.23.10
TR-98-004, TR-98-005 and TR-98-006		Ladcal Investments Ltd. O/A Pintar Manufacturing, Nour Trading House and T.S. Simms and Company Limited	5806.10.20
TR-98-007		Caulfeild Apparel Group Ltd.	5208.43.70 ¹
TR-98-016		Peerless Clothing Inc.	5407.93.20 ²
TR-98-017		Jones Apparel Group Canada Inc.	5408.32.60 ¹ 5408.33.30 ¹ 5408.34.30 ¹
TR-98-019		Tribal Sportswear Inc.	5209.12.10 ¹ 5209.22.40 ¹ 5209.32.10 ²
TR-99-002		Albany International Canada Inc.	5404.19.00 ³
TR-99-003/003A		Western Glove Works Ltd.	5209.31.30 5209.32.30
TR-99-004		Peerless Clothing Inc.	5112.11.50 ¹ 5112.19.20 ² 5112.19.30 ²
TR-99-005		Distex Inc.	6006.22.20
TR-99-006		Coloridé Inc.	5402.45.00 ³
TR-99-008		JMJ Fashions Inc.	5407.61.20 ²
TR-2000-001		Peerless Clothing Inc.	5408.22.23 ¹

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2011
TR-2000-002		Majestic Industries (Canada) Ltd.	5802.19.40 ¹
TR-2000-003		Tantalum Mining Corporation of Canada Limited	5911.40.10
TR-2000-004		Ballin Inc.	5516.23.91 ² 5516.93.00 ²
TR-2000-005		Peerless Clothing Inc.	5112.11.50 ¹ 5112.19.40 ²
TR-2000-006		Doubletex	5512.11.30 5513.11.20 5513.12.10 5513.13.10 5514.11.10 5514.12.10 5514.19.10 ³ 9997.00.00
TR-2000-007 and TR-2000-008		Scapa Tapes North America Ltd.	5208.21.50 5208.31.20
TR-2001-001		Gibson Textile Dyers	5512.29.10
TR-2001-002		Beco Industries Ltd.	5513.41.30
TR-2002-001		Richlu Manufacturing Ltd.	5209.39.10 ²
TR-2002-002		Peerless Clothing Inc.	5602.10.20 ²
TR-2002-006		C.S. Brooks Inc.	5407.91.20 5513.11.30
TR-2002-007		Peerless Clothing Inc.	5408.22.91 ¹ 5408.23.91 ¹
TR-2002-008		Tribal Sportswear Inc.	5515.11.20 ²
TR-2002-010/010A		Ballin Inc.	5516.22.10 5516.23.91 ²
TR-2003-001		Tribal Sportswear Inc.	5208.39.30 ¹ 5209.32.40 ² 5209.39.20 ² 5209.52.10 ² 5209.59.10 ²
TR-2003-002		Sunshine Mills Inc.	5205.24.30 5205.26.00 ¹ 5205.27.00 ¹
TR-2003-003		Peerless Clothing Inc.	5603.92.91 ²
TR-2003-004		Peerless Clothing Inc.	5903.90.23 ²
TR-2004-001		Tricots Liesse (1983) Inc.	5402.31.10
TR-2006-001		Peerless Clothing Inc.	5407.61.97
TR-2006-002		Tricots Liesse (1983) Inc.	5510.11.10 5510.30.10
TR-2007-001		Peerless Clothing Inc.	5603.93.70
TR-2007-002		Korhani Manufacture Inc.	5402.34.10
TR-2007-003		Peerless Clothing Inc.	5407.52.30
TA-98-001	TE-97-004 (TR-95-009)	Dyed woven fabrics of rayon and polyester	5408.31.40 ¹ 5408.32.60 ¹
TA-98-002	TE-97-003 (TR-94-009)	Vinex FR-9B fabric	5512.99.10
TA-98-003	TE-98-001 (TR-95-014)	Woven cut warp pile fabrics	5801.35.10

Tariff Relief Recommendations in Place (cont'd)

Request No./ Review No.	Expiry No. (Original Request No.)	Requester/Textile Input	Tariff Item No. as of December 31, 2011
TA-2003-001	TE-2003-001	Ring-spun yams	5205.14.20
	TE-2001-001		5205.15.00 ¹
	TE-98-002		5205.24.20
	(TR-94-002 and		5205.26.00 ¹
	TR-94-002A)		5205.27.00 ¹
			5205.28.00 ¹
			5205.35.00 ¹
			5205.46.00 ¹
			5205.47.00 ¹
			5205.48.00 ¹
			5206.14.00 ¹
			5206.15.00 ¹
			5206.24.00 ²
			5206.25.00 ¹
			5509.53.10
			5509.53.20 ²
		5509.53.30 ²	
		5509.53.40 ²	

1. Tariff item encompasses goods not covered in the original request as a result of the November 21, 2005, Order in Council.
2. Tariff item encompasses goods not covered in the original request as a result of the December 13, 2006, Order in Council.
3. Tariff item encompasses goods not covered in the original request as a result of the June 23, 2006, Order in Council, which came into effect on January 1, 2007.