



House of Commons  
CANADA

## Standing Committee on International Trade

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CIIT • NUMBER 029 • 1st SESSION • 39th PARLIAMENT

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EVIDENCE

**Thursday, October 5, 2006**

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**Chair**

**Mr. Leon Benoit**

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Thursday, October 5, 2006

• (0910)

[English]

**The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)):** Good morning, everyone. It's good to see you here this morning.

Good morning to you, too, Mr. Menzies.

Today we're here to meet with members from the Canadian International Trade Tribunal. We have with us Pierre Gosselin, chair, and John Greig, director general, research branch.

That will be the first hour and a half of the meeting. In the last half hour of the meeting we have reserved some time to discuss the steering committee meeting from yesterday on future business for this committee.

Before we get started with the questioning, and just after the gentlemen give their opening statement, I will read a statement from the tribunal that outlines the types of questions they are allowed to answer and those they're not.

We'll start right away with the presentations from the two gentlemen here. You all have a copy of the speaking notes.

I assume, gentlemen, your presentation will be roughly ten minutes. Go ahead, please, Mr. Gosselin or Mr. Greig.

[Translation]

**Mr. Pierre Gosselin (Chair, Office of the Chairman, Canadian International Trade Tribunal):** Thank you, Mr. Chairman.

It is an honour for the members of the tribunal here today to appear before the committee. We will do our best to answer your questions. Mr. John Greig and I are here today with Mr. Reagan Walker, our Legal Department Director, and Ms. Hélène Nadeau, the tribunal's secretary.

You invited us to appear before the committee to explain the Canadian International Trade Tribunal's role in determining whether dumped or subsidized imports, in the context of dumping or countervail cases, or increase imports, in the context of safeguard cases, are causing or threatening to cause injury to the domestic industry. You asked for a summary of our recent caseload and the findings made in our inquiries.

We have filed with the committee our annual report for 2005-2006. The report presents a summary of our work during the last fiscal year. It also provides an overview of our mandate. I will be pleased to answer questions you might have on this report.

I will however give you a quick overview of our mandate in the area of dumping and subsidizing injury inquiries and safeguard inquiries as you have requested. As the chairman said, we have also filed with the committee guidelines that we will follow during this appearance, as there are some areas that we cannot discuss.

As you know, the Tribunal is a quasi-judicial institution that operates at arm's length from the government. The Tribunal publishes all of its decisions and recommendations supported by reasons. It does not comment on its decisions nor does it discuss the deliberative process underlying the decision-making process. We can provide information concerning our mandate and administration.

With this in mind, let me briefly explain the tribunal's mandate in the area of dumping, subsidizing and safeguard inquiries. The Tribunal's injury findings with respect to dumping or subsidizing are made in accordance with the provisions of the Special Import Measures Act and Special Import Measures Regulations. These largely implement the requirements of the WTO Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures. The Special Import Measures Regulations, in accordance with the WTO agreements, prescribe the factors that the tribunal must consider when it is conducting an injury inquiry.

A dumping and subsidizing complaint is first filed with the Canada Border Services Agency and the tribunal begins its injury inquiry when the CBSA issues a preliminary determination of dumping of subsidizing. We have provided you with a diagram explaining the inquiry process.

When conducting an inquiry, the Tribunal follows a very rigorous process. The Tribunal ensures that potential participants that could be affected by a finding are properly notified. In addition, the Tribunal requests information and data from interested parties, receives representations and hold public hearings. Tribunal staff obtain information through questionnaires sent to manufacturers, importers, and purchasers of the subject goods. This information forms the basis of a staff report, which sets out the information in the context of the factors to be examined by the Tribunal in arriving at his findings. This report becomes part of the case record and is mandate available to the parties.

The legislation requires that the Tribunal's determination of injury be based on positive evidence and involve an objective examination of the volume of the imports, the effect on domestic prices, and the consequent impact on the state of domestic producers. The agreements specify that a causal relationship between the imports and the injury or retardation must be demonstrated and that any injury resulting from factors unrelated to dumping or subsidizing be set aside.

At the public hearing, the domestic industry must provide evidence that the dumping or subsidizing of goods has caused injury or retardation or is threatening to cause injury. Importers or exporters, and users challenge the domestic industry's case. After cross-examination, each side has an opportunity to respond to the other's case and to summarize its own. The Tribunal issues its findings within 120 days from the date of the preliminary determination. A positive finding of injury or retardation or of threat of injury is the legal authority for the CBSA to impose antidumping or countervailing duties immediately and for a five-year period.

● (0915)

[English]

I would now like to turn to the global safeguard inquiries.

There's a fundamental difference between safeguard measures and anti-dumping or accountability measures. Safeguard measures provide a remedy to rapid increases in imports that cause injury to domestic producers. The measures help injured domestic producers adjust to increased import competition.

In comparison, anti-dumping and countervailing duties provide a remedy to imports found to be underpriced that cause injury to domestic producers. The measures are designed to eliminate the advantages conferred by this underpricing.

I will first address global safeguards, and then we can turn to the China safeguards.

A global safeguard inquiry can be initiated either by the government or directly through a complaint by domestic producers. The purpose of the safeguard inquiry is to determine whether goods are being imported in such increased quantities and under such conditions as to cause serious injury or threat of serious injury to Canadian producers of like or directly competitive products.

In making its determination, the tribunal is to examine, among other factors, the actual volume of the goods imported into Canada from all countries, the effect of the imported goods on prices of like goods in Canada, and the impact of the imported goods on domestic production of like goods in Canada.

The inquiry process followed is very similar to a dumping or subsidy inquiry. Data is collected, a staff report is prepared, parties file their submissions, and a public hearing is held. The tribunal reports to the government and to the Minister of Finance when it completes a safeguard inquiry.

If the tribunal finds serious injury or threat thereof, it can recommend a safeguard measure only if it has been ordered to do so on referral by the Governor in Council. Without such an order, the tribunal has no statutory authority to address the remedy issue. The

decision on whether to implement the tribunal's remedy recommendations rests entirely with the Governor in Council.

Moving to the China safeguard inquiries, the CITT act was amended in 2002 to implement the safeguard provisions of the protocol of accession of China to the World Trade Organization. China agreed to allow WTO members, during a 12-year period, to take bilateral safeguard actions against its imports if they were found to be causing market disruption or trade diversion. These bilateral safeguard provisions expire on December 11, 2013.

The most obvious difference from global safeguard inquiries is that the goods concerned come from just one source, namely China. Another key difference is that the causation and the injury thresholds are lower than in a global safeguard and consist of a significant cause of material injury versus a principal cause of serious injury.

As in global safeguards, the tribunal may commence a market disruption inquiry or trade diversion inquiry following a request by the government or a complaint by domestic producers. Following receipt of a complaint from domestic producers, the tribunal decides whether or not to accept the complaint and to commence an inquiry.

The purpose of a market disruption inquiry is to determine if goods originating in China are being imported into Canada in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive goods.

In making its determination, the tribunal is to examine, among other factors, the actual volume of goods imported into Canada from China, the effect of those imported goods on prices of like goods in Canada, and the impact of the imported goods on domestic production of like goods in Canada. Once again, the tribunal reports to the government and to the Minister of Finance. It can only recommend a safeguard measure following a finding of market disruption, or threat thereof, if it has been ordered to do so by referral by the Governor in Council.

● (0920)

The purpose of trade diversion inquiries is to determine whether any action affecting imports of goods from China into the market of another WTO-member country causes or threatens to cause a significant diversion of trade into the Canadian domestic market. I won't go into detail on that aspect, since there has been no such complaint so far before us. The tribunal is, again, required to make its report to the government and to the Minister of Finance.

Mr. Chairman, that's my opening statement, and I will be pleased to answer the committee's questions.

**The Chair:** Thank you very much, Mr. Gosselin, for your presentation.

We'll go directly to questioning.

Mr. Gosselin, you did point out that this is a quasi-judicial institution and there are types of questions on which you really can't get into in any detail. I'll leave that to you to judge, as you're being asked the questions.

We'll start the questioning with Mr. Temelkovski, for seven minutes.

• (0925)

**Mr. Lui Temelkovski (Oak Ridges—Markham, Lib.):** Thank you very much, Mr. Chair, and thank you, Mr. Gosselin, for the briefing.

You mentioned that the tribunal's injury findings are reported due to the Special Import Measures Act and so on, but you also mentioned that they are only heard after they've gone through the Canada Border Services Agency. Why do they start with the Canada Border Services Agency prior to coming over to the tribunal?

**Mr. Pierre Gosselin:** The responsibility of the Canada Border Services Agency is, first of all, to determine whether there's a properly documented case. Once they've decided that they are going to initiate an inquiry, they pass the file onto the tribunal. The tribunal makes a preliminary determination of whether there is a prima facie case of dumping or a subsidy, and then the Canada Border Services Agency produces the preliminary dumping or subsidy conclusion. After that, the tribunal starts its final determination.

You have before you, I believe, a chart that maps out the process.

**Mr. Lui Temelkovski:** I see that the global safeguard inquiries collect the data and there's a report that's produced, at which time the parties are submitting their information, and I'm led to believe that your tribunal will produce a report of some recommendations.

**Mr. Pierre Gosselin:** I think we have to make a distinction between a dumping or subsidy inquiry and a safeguard inquiry. A dumping and subsidy inquiry is quite different. It involves, as you mentioned a few moments ago, CCRA starting the process and then sending the information to us to make a preliminary determination of injury. If and when we do that, CCRA then makes its determination as to whether or not there is dumping or subsidy. Then we start our final determination on that subject.

If we're talking about safeguards, CCRA is really not involved. The complaint is either sent to us by the government or we are approached directly by the industry. The complaint there has to do with a substantial increase of imports from a particular source, or from all sources. The tribunal then proceeds to determine whether that increase in imports has caused injury to domestic producers. There is no mention in the safeguard process of dumping or subsidy.

In both cases, when the tribunal makes a determination of injury—or not, as the case may be—it's always accompanied by a statement that gives detailed reasons as to how the tribunal arrived at its conclusion.

**Mr. Lui Temelkovski:** Was the tribunal involved with the softwood lumber issues and any of the litigation or injuries that were caused to Canadians?

**Mr. Pierre Gosselin:** No, sir. The softwood case is before the U.S. court—the ITC, International Trade Commission. It's both a dumping and subsidy case, but it's in the United States, not in Canada. We have nothing to do with that.

We deal, sir, with complaints by Canadians against foreigners.

• (0930)

**Mr. Lui Temelkovski:** Would you say that some of the processes and procedures you use are used by our cousins down south?

**Mr. Pierre Gosselin:** Yes, sir. The genesis of all of this is the international agreements in the World Trade Organization, which enjoin the parties to have certain kinds of procedures to deal with dumping and subsidy and safeguards. It starts from the same source. We then internalize those agreements into domestic legislation. The United States has done the same thing.

**Mr. Lui Temelkovski:** We learn from each other, I would assume.

**Mr. Pierre Gosselin:** Let's say that we all participate at the same negotiation to establish those agreements. Those agreements, once the government has accepted them, are then internalized into domestic legislation.

**Mr. Lui Temelkovski:** Are we exposed to any unusual amount of dumping from any particular country or industry right now that maybe you're looking at?

**Mr. Pierre Gosselin:** I don't think I would characterize it that way, no.

The cases on dumping and subsidy come to us as a result of industry complaints. It's really up to the industries involved to make the first move. They have to document their case and present it, then we'll deal with it. I guess over the years there has been a concentration.... The tribunal has heard many steel cases, for instance, many agricultural cases, and manufactured goods cases. They are the most prevalent.

**The Chair:** Thank you, Mr. Temelkovski and Mr. Gosselin.

We'll go now to the Bloc, to Monsieur André, for seven minutes.

[*Translation*]

**Mr. Guy André (Berthier—Maskinongé, BQ):** Mr. Gosselin, Mr. Greig, good morning and thank you for being here today.

My questions will primarily be on safeguard measures. As you are aware, several Quebec companies, including some from the bicycle sector, have asked that safeguard measures be introduced to protect them from competition from Asian companies. I imagine that you are also familiar with the barbecue issue.

In the bicycle sector, as you are aware, following an inquiry, the Canadian International Trade Tribunal recommended that safeguard measures be introduced. The process is often very complex and costly for businesses. Preparing a case for the Canadian International Trade Tribunal requires hundred of thousands of dollars.

The government did not introduced safeguard measures in response to the Tribunal's recommendation. I believe that this might have been for political reasons. Perhaps the government thought that if it introduced safeguard measures in vulnerable sectors, other countries would follow suit, and so on. In that regard, you know quite well the issues I am talking about.

I find it disheartening to see companies spending a fortune to state their case before the Canadian International Trade Tribunal. Even if unfair competition is proven, the government has the last word and can choose not to implement safeguard measures. This is in spite of the fact that these businesses have spent hundreds of thousands of dollars.

In Quebec, the furniture sector filed a request seeking safeguard measures; or should I say, try to do something in response to the threat it faces. The industry is very vulnerable to international competition. As I understand it, the Tribunal undertook a cost analysis and stated that this study was to be divided into seven, more detailed sections. I am sure that you are familiar with the file. When those working in the furniture sector realized that the government had ignored the Tribunal's recommendations on the bicycle sector, they decided that, rather than spending \$300,000, \$400,000 or \$500,000 seeking safeguard measures that would most likely not be implemented, they would be better off exploring other solutions.

That brings me to ask whether you have enough power. Should the Canadian International Trade Tribunal have greater power of enforcement? Should companies that spend exorbitant amounts of money seeking safeguard measures be compensated if they win their case?

It seems to me that there is really a problem. I would like to hear your views on the subject.

● (0935)

[English]

**The Chair:** Mr. Gosselin.

[Translation]

**Mr. Pierre Gosselin:** It is somewhat difficult for me to answer your question as it is political in nature and that is beyond our mandate. We apply the law. Were the government to see fit to task us with providing more support to industry, through counsel, for example, it would be for it to set up and implement such a program. It is not for the Tribunal to comment on such questions.

**Mr. Guy André:** What I want to know is whether the government could improve the Canadian International Trade Tribunal and how it operates. We are here as a committee today—we can consider recommendations.

**Mr. Pierre Gosselin:** I appreciate that the procedures applied by the Canadian International Trade Tribunal are complex, but that cannot be avoided. The agreements negotiated in Geneva, at the WTO and elsewhere, that have been signed by the government and incorporated into Canadian law require that these procedures be followed in a specific manner. That involves a certain degree in complexity.

Obviously, when the government decides to intervene in an open market, we try to be as fair and transparent as possible. This is what leads to such complexity. There are very often a high number of stakeholders, of opposing views, involved in cases relating to safeguard measures. That was certainly true of the bicycle sector file.

**Mr. Guy André:** How many requests for safeguard measures have you received from Canadian businesses since 2002? How often have such measures been introduced? How much have businesses

paid to have these measures enforced and their industry protected? Do have any figures on that?

● (0940)

**Mr. Pierre Gosselin:** I think that there have been six requests since 2002, one of which concerned finished bicycles and one which concerned bicycle parts. We have also received requests relating to barbecues, tobacco, furniture and clothing. Of these cases, three were heard, one was withdrawn, and another is still under review. In the case of the furniture sector, the Tribunal decided that there was not enough proof to warrant further action.

[English]

**The Chair:** Merci, Monsieur André.

We'll now go to the government side, and Mr. Menzies, for seven minutes.

**Mr. Ted Menzies (MacLeod, CPC):** Thank you, Mr. Chair.

I have one quick question that I hope you can answer. What would CITT's budget be for a year, and how many people are we looking at?

**Mr. Pierre Gosselin:** We are looking at more or less 95 employees, including the members. The budget is around \$9.5 million to \$10 million. Essentially the budget is salaries. There's not very much operational budget.

**Mr. Ted Menzies:** Thank you.

The reason I asked that is partially that Canada is a very trade-dependent nation. In agriculture, for example—my former role in life—we are absolutely dependent on foreign markets. I look at this and many other industries, and we have more production than we can consume in this country. That's a great thing. We're able to share what we have and what we can produce with the rest of the world. That's a wonderful opportunity and gift that we have.

I look at CITT as a bit of a form of protectionism for those who are not wanting to compete or not willing to compete. That's just a bit of an observation, and I'm sure some people will disagree with me; however, that is my view.

We could belabour what has happened over the last few years for hours here, and I don't want to do that. I would like to ask what role you could play or what advice you might give us, in our study that we're taking part in now at this committee, on how to make Canadian companies more competitive on the world scale. What advice can you give us that we can put in this report to give to our Canadian companies on how to avoid pitfalls, so that they don't fall into the countervail and anti-dumping that your counterparts in other countries may hold against us? What advice could you give us on that?

**Mr. Pierre Gosselin:** Well, Mr. Menzies, both of those questions are a little beyond the mandate of the tribunal, so it's difficult for me to provide answers to those kinds of questions.

In terms of avoiding the pitfalls of dumping and subsidy, the only advice I can give a domestic industry is to be very careful about how it prices its goods in a foreign market, so that they don't expose themselves to the possibility of a dumping complaint or a subsidy complaint.

**Mr. Ted Menzies:** Okay, thank you. I was hoping that was more the reason we had invited you here, to look towards the future.

Looking towards the future, then, with the stalemate we now have at the WTO, you referred several times to that as the parameters of your decision-making, as based on the WTO. What changes do you see that we need at the WTO to limit these types of situations that land on your desk, if we can get the round restarted?

● (0945)

**Mr. Pierre Gosselin:** Perhaps I need to clarify, on the role of the tribunal, that it is not a policy-making organization. It's like a court, essentially. We take the legislation we are given and apply it to the complaints that come before us. It's really not our role to comment on how the agreements in Geneva should be changed.

**Mr. Ted Menzies:** I just thought you might have a wish list, that we might be able to avoid some pitfalls in the future from some of your past experiences.

**Mr. Pierre Gosselin:** Well, they would be personal. But since I'm here to speak on behalf of the tribunal, I'll limit myself to what the tribunal can speak about.

**Mr. Ted Menzies:** Maybe we should talk later.

**The Chair:** Ms. Guergis.

**Ms. Helena Guergis (Simcoe—Grey, CPC):** Can you tell me if there are really any safeguard measures we might impose that would be vulnerable to a challenge at the WTO?

**Mr. Pierre Gosselin:** I don't believe we've had, in the recent past, at least, since the tribunal has been in existence, any case that we have heard and decided that has gone to the WTO. There has been no complaint against the way we've executed our responsibilities.

**Ms. Helena Guergis:** So I guess on my question there would probably be the same answer that you've given to others, that you can't give us some insight from your experience as to what you think they might be.

**Mr. Pierre Gosselin:** Well, I think the agreements on dumping and subsidy and safeguards are reasonably clear, and these are internalized in domestic legislation. I think governments get into difficulty in the WTO when they don't respect the terms of the agreements that they've signed. So far, we've been fortunate that this has not happened to us.

**Ms. Helena Guergis:** What about a role for CITT in expanding internal trade within Canada, in light of the B.C.-Alberta agreement that was recently signed? Do you see a role?

**Mr. Pierre Gosselin:** The only role we have internally at the tribunal is in government procurement, where we are the appeal court for complaints against the federal government in procurement matters. If the government decides that it sees a role for the tribunal in other internal trade matters, then it's really up to the government to give us that mandate. But at the moment, we don't have a mandate beyond the one in government procurement.

**The Chair:** Thank you, Ms. Guergis.

Mr. Julian, for seven minutes.

[*Translation*]

**Mr. Peter Julian (Burnaby—New Westminster, NDP):** Thank you, Mr. Chairman.

Thank you for being here today gentlemen.

I would like to follow up on Mr. Temelkovski and Mr. André's questions on the scope of the decisions and the regularity with which the federal government implements them.

You listed the decisions that the Tribunal has made. Could you tell us how many of them have been adopted and implemented by the federal government since 2002, and how many have been ignored?

**Mr. Pierre Gosselin:** In what sector?

**Mr. Peter Julian:** In all sectors where the government has received specific directives or recommendations.

● (0950)

**Mr. Pierre Gosselin:** Are you referring to safeguard measures?

**Mr. Peter Julian:** Yes, but also to any decision that concerned the federal government. I understand that you cannot force the government to respect your recommendations; however, I would like to know how often it has implemented your recommendations and decisions, how often it has fully incorporated them, how often it has partly implemented them, and how often it has disregarded them.

**Mr. Pierre Gosselin:** A decision by the Tribunal is binding in dumping or countervail cases. By this I mean that the tax is applied for a five year period from the moment the Tribunal determines that injury has been caused. It is not open to debate, it is automatic.

In some cases, the second part implies that the government must make a decision only when the Tribunal issues a decision and makes recommendations. For example, the government has mandated us to make recommendations on customs duties in the textile sector. So far, we have carried out three general inquiries on textile. In two of the three cases, the government implemented the Tribunal's recommendations. We are still waiting for the government's decision on the third, and most recent, case.

In both the bicycle file and the barbecue file, that your colleague mentioned, the government decided not to implement the tribunal's recommendations.

In 2002, an exhaustive study was carried out on imports of nine different steel products. In this instance, the Tribunal determined that five of the nine products had caused injury and, consequently, issued certain recommendations to the government. However, the government chose not to implement the tribunal's recommendations.

**Mr. Peter Julian:** Could it be said that the government respects the tribunal's recommendations in the majority of cases?

**Mr. Pierre Gosselin:** The government decided not to implement the tribunal's recommendations on safeguard measures, but did implement those on tariff relief.

**Mr. Peter Julian:** Mr. André asked you to give us an indication of how much companies spent bringing their case to the Tribunal.

**Mr. Pierre Gosselin:** I am afraid I am unable to give you even an approximation.

**Mr. Peter Julian:** I would now like to come back to the question of the involvement of...

**Mr. Pierre Gosselin:** Allow me to clarify that when a business or a sector opts to take a matter to the Tribunal, it is free to determine how it wants to be represented. Legal representation involved costs; however, although many companies choose to do so, it is not necessary for a party to be represented by counsel during proceedings. Obviously, hiring a legal counsel can be costly, but we do not know exactly how much it costs.

**Mr. Peter Julian:** Very well.

I would like to return to the question of the tribunal membership. Representation on the tribunal is something that the union movement has long been demanding. The NDP member for Winnipeg-Centre, Pat Martin, even tabled a bill aiming to guarantee that one seat on the tribunal be reserved for a union representative to ensure that job losses and the effect on the community be taken into consideration. This would allow workers to request inquiries through the union.

Are workers currently able to ask a tribunal to open an inquiry?

• (0955)

**Mr. Pierre Gosselin:** We deal with different sorts of cases. In cases relating to safeguard measures or dumping, the complaint must be filed by the industry that is facing injury.

**Mr. Peter Julian:** That means that, under the current system, in a case where the industry is still making a profit, communities and workers do not have a voice even if dumping practices are causing significant job losses. There is no way for them to address this problem, which has an impact on Canadian industries, and to request an inquiry.

**Mr. Pierre Gosselin:** They can go to the Tribunal as industry representatives, if they have the support of their producers. Obviously, if workers want to file a complaint, they have to do so as representatives of the sector's producers.

**Mr. Peter Julian:** If the producers are divided on a matter, how does the Tribunal determine...

**Mr. Pierre Gosselin:** The tribunal has to ensure that the complaint is supported by the majority of the sector, although that does not necessarily mean 50% or more. It simply means that the complainant must be representing a solid share of the industry' stakeholders.

[English]

**The Chair:** I've let you go a little longer here, so I'll have to cut you off.

Mr. Wilfert.

**Hon. Bryon Wilfert (Richmond Hill, Lib.):** Thank you, Mr. Chairman.

Gentlemen, I understand you have a \$10 million budget and 95 employees. You're a quasi-judicial body that also plays an advisory role. I understand that quasi-judicial role.

Clearly there seem to be repeat offenders like China, the United States, Korea, and others due to certain policies, and the issues are referred to you by producers. What kind of advice do you typically give to government, and essentially what kinds of responses do you get? I realize the government isn't necessarily bound by that advice, but what examples can you give us of where you play that advisory role?

**Mr. Pierre Gosselin:** First of all, our advisory role is circumscribed. We only give advice where asked, and we draw our authority from the mandate that's given. We can't give advice on things we're not asked for. We essentially try to answer the questions that the government puts to us.

As a good example, on a number of occasions in the last two or three years, the Minister of Finance asked us how we could reduce input tariffs in the textile area. We studied the issues and we tried to see, on balance, where the costs and benefits would be for the textile producers, the government producers, and we gave advice to the government on how the tariffs should be changed in those areas.

• (1000)

**Hon. Bryon Wilfert:** And what was the response of government to that?

**Mr. Pierre Gosselin:** We've had three major requests from the Minister of Finance, plus a standing request. On the standing request, which is usually by individual firms for an individual type of product or fibre or yarn or textile, I would say the vast majority of those have been implemented.

In the larger inquiries, we've had three, and they cover the whole ten or eleven chapters of the tariff dealing with textiles. The first two have been implemented fully. On the third one, which was a small subset of the second one, the Minister of Finance has yet to respond.

**Hon. Bryon Wilfert:** Where you see a number of disputes coming to you from what I would suggest are repeat offenders, you don't make any comment on those; you simply respond to the cases. You don't say to government, there seems to be a pattern, there's an issue here. Is that the case whether it's steel or whether it's garlic?

**Mr. Pierre Gosselin:** "Repeat offenders" is, I guess, your characterization.

**Hon. Bryon Wilfert:** I'd say that if you do it more than twice, you must be a repeat offender. How would you characterize it?

**Mr. Pierre Gosselin:** I wouldn't, sir.

**Hon. Bryon Wilfert:** You don't have an opinion, or you're not giving one?

**Mr. Pierre Gosselin:** No, we don't have an opinion on that.

**Hon. Bryon Wilfert:** With \$10 million for advice, I would expect an opinion.

**Mr. Pierre Gosselin:** We don't give advice at large. If we're asked a question, we give advice. The question really is what frames the scope of our mandate.

**Hon. Bryon Wilfert:** What would your advice be, then, on those who have continued to come forward?

**Mr. Pierre Gosselin:** You have to realize that dumping and subsidy cases are private actions. Individual companies or industries come before us with a complaint. We deal with the complaint on the basis of the facts that are placed before us. We can't do more than that.

**Hon. Bryon Wilfert:** I know you're mandated by government. You're probably going to say no, but do you have any suggestions in terms of the mandate that you have? Do you have the appropriate tools, given the complexity of some of the cases that are increasingly coming forward? Do any of those tools maybe need to be expanded?



**Mr. Pierre Gosselin:** I believe we're sufficiently well resourced, sir.

**Hon. Bryon Wilfert:** Okay, thank you.

**The Chair:** Thank you, Mr. Wilfert. Your time is up.

We'll now actually go to the Bloc, and Monsieur Cardin.

[*Translation*]

**Mr. Serge Cardin (Sherbrooke, BQ):** Thank you, Mr. Chairman.

Good morning, gentlemen.

To all intents and purposes, the Canadian International Trade Tribunal, the CITT, applies the act and regulations according to WTO rulings.

Let us take the example of China. Generally speaking, in some areas Canada decided some time ago to assume that all economies were market economies under the Special Import Measures Act, and that it was necessary to prove that the opposite was true.

Now, if we take the narrow WTO view, while Canada is applying this rule, why are other countries as important as those in Europe, the U.S., Mexico and Japan not recognizing that China has a market economy?

**Mr. Pierre Gosselin:** First of all, the decision about the market economy was made by the Canada Border Services Agency, and not by the Canadian International Trade Tribunal. It is up to the agency to review the industry in question to determine whether there is really a free market in this area. It does not make a decision until this has been done.

•(1005)

**Mr. Serge Cardin:** From that point of view, the market economy is preventing us from identifying a certain level of dumping through the...

**Mr. Pierre Gosselin:** Yes, but as I was saying, it is really up to the agency to determine the subsidization or dumping margin. That is not something the Tribunal does.

We use the data put out by the agency. If it is decided that there is injury, on the review of other factors, the agency will definitely levy a tax on the imports according to the margin it determined.

**Mr. Serge Cardin:** In your statement, you talked about inquiries into the safeguard measures with respect to China. Generally speaking, the business community and the general public are all under the impression that our doors are wide open to Asian imports, including China and that there are no limits on what is imported.

However, you said that certain provisions were applied directly to China. You spoke about some measures that are to expire on December 11, 2013.

Would you please summarize quickly what these measures are regarding China?

**Mr. Pierre Gosselin:** All countries that become members of the WTO must pay a price initially. In the case of China, it agreed that WTO members would apply safeguard measures where necessary. These measures are different, stricter than normal, for a transitional period. That period ends in 2011.

**Mr. Serge Cardin:** You mentioned 2013.

**Mr. Pierre Gosselin:** It is 2013. I am sorry.

**Mr. Serge Cardin:** But you spoke about strict measures.

**Mr. Pierre Gosselin:** Yes. Let us say that the level of proof is much lower than in the case of a normal safeguard measure.

**Mr. Serge Cardin:** When you refer to material injury, you distinguish between "significant" and "principal". Could you explain the difference for me, please?

**Mr. Pierre Gosselin:** Deciding what is significant and what is not is often a concern to tribunal members.

When we see the injury that could be caused by imports from China in this context, we accept that this injury is much less significant in order to apply the measure. On the other hand, in the case of a normal safeguard measure, this must be the principal cause of the injury.

I know that this is not specific or mathematical, but given the tribunal's experience, we distinguish between the most significant reasons and a reason.

[*English*]

**The Chair:** Thank you, Monsieur Cardin, your time is up. We will go now to the government side.

Just for the information of the witness, Ms. Guergis is going to ask a question, and then Mr. Cannan will go right into his questions, and they would like you to answer all the questions together.

Go ahead, Ms. Guergis.

•(1010)

**Ms. Helena Guergis:** Thanks very much.

I'm just taking a look at the information I've been given here about appeals. It says that the CITT actually hears appeals on the decisions of the Canada Border Services Agency, but they also hear them for the Minister of National Revenue under the Excise Act. I was hoping you could give some specific examples of this.

**Mr. Ron Cannan (Kelowna—Lake Country, CPC):** Thank you, Mr. Chairman, and thank you for your presentation this morning. I've got six questions. There are some shorter ones, and you can expound and answer later.

Who can initiate a complaint, business or industry individually? Can they come and make an application?

**Mr. Pierre Gosselin:** Excuse me, if you have a whole bunch of questions, and they're short, I could answer one after the other, rather than—

**Ms. Helena Guergis:** No.

**Mr. Pierre Gosselin:** No? Okay.

**Ms. Helena Guergis:** We just want to get them out, if we can. Thank you.

**Mr. Pierre Gosselin:** Okay.

**Mr. Ron Cannan:** So who can initiate a complaint, an individual or business, or does it have to be an association? What is the average cost of a complaint? What is the timeline for the complaint? And if there is an appeal, can you describe the appeal process, which Ms. Guergis alluded to? You can expound on the answer to her question on appeals.

What is the cost? If the complainant is successful, i.e. if the recommendation from your review of the tribunal is favourable, is there a mechanism for cost recovery, such as the courts?

I come from the interior of British Columbia, from the horticulture community. The apple industry is a big part of our valley. Concerns about the oversupply of Washington apples have been going back and forth. There are often allusions to their being dumped into the community and bringing prices down and really causing a lot of challenges for the orchard community.

In number 11 and number 19 in your handout, you talk about mechanisms and the level of tolerance. In the softwood lumber agreement there's sort of an anti-surge mechanism, that with the pine beetle you could only have a 10% increase over previous years. What do you use as far as a level of tolerance goes to determine if there is a dumping situation? As you know, in the horticulture industry there can be so many determinants, weather being one of the big factors. What threshold or level of deviation do you provide within your interpretation?

There's some food for thought there for you. Thanks.

**The Chair:** Mr. Gosselin, you have about three minutes for answers.

**Mr. Pierre Gosselin:** There are two types of appeals, and I'll give you an example. One could be appeals to classification decisions by CCRA in which a product is classified under a certain tariff, item number, and the importer pays the duty on those goods. If he or she doesn't agree with the classification that has been given to those goods, they are at liberty to appeal the classification decision, and that could eventually come to us. We would look at the goods, hear their arguments, and decide what the proper classification is.

The reason they might appeal the classification is that different classifications attract different tax levels. The excise tax is usually a value-for-duty issue. When you import goods, the customs department, CCRA, will determine the value of those goods to apply the tax on. There are sometimes disputes on whether some parts of the cost of those goods could be removed or shouldn't be taxed, and so we look at that in terms of the Excise Tax Act.

Who can initiate? The producers or associations representing producers can initiate a dumping or subsidy complaint or a safeguard complaint.

What is the average cost? We have no idea. We're never given that type of information. All we know is our costs, and those are represented in our budget for all these different types of actions.

On the timelines, I believe we distributed this morning the charts for Special Import Measures Act cases and safeguard cases. From the time of initiation of a dumping investigation—we start the final investigation from the date of the preliminary dumping determination—it's 120 days. In a safeguard complaint it's considerably longer

than that. From initiation to the end it can be about 180 days. In a China safeguard it's 90 days from beginning to end. In appeals there is no legislated timeframe, although we try to deliver those cases in about 120 days. In government procurement cases it's 90 days.

•(1015)

**The Chair:** Thank you very much, Mr. Gosselin.

We'll go now to Mr. Julian, for five minutes.

**Mr. Peter Julian:** Thank you, Mr. Chair.

I'd like to come back to the issue of having workers' representatives on the tribunal. Do you see any obstacles to that happening? What would need to be changed in order to achieve that end?

**Mr. Pierre Gosselin:** By representatives, do you mean members?

**Mr. Peter Julian:** Tribunal members, yes.

**Mr. Pierre Gosselin:** The choice of members is made by the Governor General in Council. Normally we publish a statement of qualifications. In other words, people who have some knowledge of the area are looked for. There is an interview process, but really that's just to establish competence in the area, and then the Governor General in Council makes decisions. I don't see any impediment for the Governor General in Council deciding on the candidacy of a person who has a labour background.

**Mr. Peter Julian:** We talked earlier about the actual initiation of investigations and the fact that you determined that a majority of the industry had to agree with putting forward an investigation for it to actually happen.

At the public hearing stage, are community and labour representatives able to make presentations?

**Mr. Pierre Gosselin:** Yes, and some have. I can't remember exactly which cases, but we have had instances. The labour union representing the workers in the bicycle industry appeared before the tribunal.

**Mr. Peter Julian:** Okay. So in most cases where you move to public hearings—

**Mr. Pierre Gosselin:** No, I didn't say that. I said in some cases they have, but interested parties can register, and "interested parties" is a fairly broad definition. Somebody who is affected by the case before us can appear. They just have to register and go through some formalities, such as giving a copy of their statement, etc.

●(1020)

**Mr. Peter Julian:** My final question is around procurement review activities. I notice for the caseload 2005-06 that three-quarters of the cases were withdrawn, not initiated, or dismissed. For procurement review, why is that so in the vast majority of cases? Is this an anomaly? What is the reason for most of those cases not being upheld?

**Mr. Pierre Gosselin:** There are a lot of technical reasons that might disqualify a case. The timeframe in government procurement cases is extremely short. Under the act, they have 10 working days from the time they knew, or should have known, the basis of their complaint to file their case.

So if they file their case later than that, we have no jurisdiction and can't accept the case. That is one of the reasons.

**Mr. Peter Julian:** Thank you.

I have no further questions, Mr. Chair.

**The Chair:** Does a member of the Bloc have a question? Go ahead, and then the member of the government party has a question or two.

Go ahead, please, Mr. André

[Translation]

**Mr. Guy André:** First of all, I would like to add something. Earlier, we were talking about bicycles. I would like to add that the company paid \$300,000 in legal fees to be heard by the Canadian International Trade Tribunal, and the government refused to apply safeguard measures. I wanted to add that piece of information.

I have a question about some decisions made by the Canadian International Trade Tribunal, particularly about imported milk proteins and butter oils, which are very harmful to farmers.

You are familiar with the significant effort made by governments to protect supply management. At the moment, 50% of the ice cream in Quebec is produced using butter oil. That is very harmful to our farmers. You made a decision that this was not harmful to farmers in Quebec and Canada. I would like to hear your comments on this.

There is also the furniture industry. Representatives of the furniture industry took action regarding safeguard measures for the high cost of \$300,000 as well, and they were not even heard by the Canadian International Trade Tribunal. In this case, the tribunal was of no assistance to them.

They filed a complaint about the fact that their application was turned down because of the way in which it was presented. They received no assistance. In fact, industry representatives themselves did all the research required to put forward their request for safeguard measures. After all this work, which cost them \$300,000, they finally learn that they had not proceeded correctly. So they got no feedback from the Canadian International Trade Tribunal.

Can you comment on these two cases: the farmers and the assistance you provide to...

**Mr. Pierre Gosselin:** In the first case, regarding butter oil, there was a general inquiry, and we made a number of recommendations to the government of what should be done in this matter.

Second, the government asked us to rule on the tariff classification for goods coming into the country. The tribunal looked into the matter and made a decision regarding the classification of the tariff item. The tribunal has never ruled whether this had a harmful effect or not.

With respect to the furniture industry, it is true that we were consulted. We studied the matter, and we requested some additional information from the individuals involved, but unfortunately, they were unable to give us enough information so that we could undertake or sanction an inquiry.

●(1025)

**Mr. Guy André:** One of the reasons the people from the furniture industry put forward was of course the fact that the government had just turned down a request for safeguard measures for bicycles after the company had spent \$300,000. Industry representatives were therefore somewhat discouraged at these results.

Another reason was that they did all the research and the inquiry themselves, but their work did not meet the tribunal's requirements. They say that they would have liked some feedback before the end of the process, before they had spent \$300,000.

Does the tribunal provide some support to companies that ...

**Mr. Pierre Gosselin:** In this case, we were in contact with the plaintiffs to try to provide them with as much guidance as possible. However, we are a tribunal, so we cannot be biased. We told them what type of information we needed in order to proceed. Unfortunately, in this case, they were unable to provide this information, and we did not proceed.

[English]

**The Chair:** Thank you, Monsieur André.

Now we will go to the government side, but not for a full five minutes. Mr. Obhrai, you have about three minutes.

**Mr. Deepak Obhrai (Calgary East, CPC):** Thank you very much.

Could you quickly give me a rundown of the procedure? I received an anti-dumping complaint about rebar coming into the country from China. This is because the east coast industries complain when there is none, yet on the west coast, where they have no rebar, they import it from China. How does the tribunal look into this to balance this thing out? What can this constituent do?

**Mr. Pierre Gosselin:** What has to happen is that your constituent has to have the support of the producers of rebar in Canada to initiate a complaint.

**Mr. Deepak Obhrai:** What would this constituent do? He's from the west coast.

**Mr. Pierre Gosselin:** Is he a producer?

**Mr. Deepak Obhrai:** No, he's an importer of these things, and it's impacting on his business.

**Mr. Pierre Gosselin:** Why would he be complaining about this?

**Mr. Deepak Obhrai:** He's not complaining. The complaint came from the east coast, where the industries are.

**Mr. Pierre Gosselin:** The tribunal is not in possession of any complaint on rebar at the moment.

**Mr. Deepak Obhrai:** Just give me an overall picture, so I understand what happens.

**Mr. Pierre Gosselin:** If the domestic producers of rebar were feeling that imports from particular countries—or from all countries—were causing them injury, then they would come before the tribunal.

**Mr. Deepak Obhrai:** On the other side of the coin, the other producers who are importing, would they give their input as well?

**Mr. Pierre Gosselin:** Oh absolutely. It's an adversarial process. It's like civil court, in a sense.

The domestic producers would make their complaint, saying that because of the way they're priced or where they're sold, imports of rebar from country X or countries X, Y, and Z are causing them injury, causing them to lose market share or whatever the indication of injury is. The tribunal would receive that, would then notify everyone they could think of in the industry who would have an interest in this, and they would publish it in the *Canada Gazette*, calling for parties to identify themselves.

The opposition would also have an opportunity to put in a case, and eventually we would have a hearing. Both sides would be represented at the hearing, and both sides would have an opportunity to cross-examine and then make their argument.

● (1030)

**Mr. Deepak Obhrai:** But this would be published in the *Gazette*.

**Mr. Pierre Gosselin:** We always publish the initiation of a case in the *Gazette*, yes.

**The Chair:** Thank you, Mr. Obhrai.

Thank you very much, gentlemen, for coming today. I do appreciate that very much.

Our time is up for this section of the meeting. We will suspend and go to an in camera meeting on future business of the committee.

The meeting is adjourned.

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**Publié en conformité de l'autorité du Président de la Chambre des communes**

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