

Canadian International Trade Tribunal

Performance Report

**For the
period ending
March 31, 1999**

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Performance Report

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Paul Martin
Minister of Finance

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Canadian International Trade Tribunal	
Provides to Canadians:	To be demonstrated by:
Support of a fair and open trade system	<ul style="list-style-type: none"> ➤ Upholding of the Tribunal's decisions by national and international appeal bodies. ➤ Implementation of the Tribunal's recommendations by the government. ➤ Publication of the Tribunal's decisions in a timely way. ➤ The Tribunal's decisions are viewed as fair and impartial by domestic and international stakeholders.

Part I

Chair's Message

Chair's Message

I am pleased to present the Performance Report of the Canadian International Trade Tribunal (the Tribunal) for fiscal year 1998-99. The Tribunal is a key player within Canada's trade remedies system as a result of its jurisdiction under the *North American Free Trade Agreement*, the *Agreement on Internal Trade*, the World Trade Organization agreements, the *Canada-Israel Free Trade Agreement* and the *Canada-Chile Free Trade Agreement*.

The Tribunal is an organization characterized by a most diversified mandate, whose workload is entirely externally generated. For this reason, the Tribunal had to effectively coordinate a workload made up of dumping and/or subsidizing inquiries, appeals of decisions of the Department of National Revenue, a constantly increasing number of procurement complaints and investigations into tariff relief requests. Nevertheless, the Tribunal met all statutory or prescribed deadlines, even though the Tribunal could not count on a full complement of members for all of fiscal year 1998-99.

Bill C-35 amending the *Special Import Measures Act* and the *Canadian International Trade Tribunal Act* received Royal Assent on March 25, 1999. In preparation for the implementation of Bill C-35 that should be established by Order in Council during fiscal year 1999-2000, the Tribunal has made significant efforts to ensure that its processes and rules of procedure reflect the legislative amendments that have been made. In-depth consultations took place with representatives from the departments of Finance and National Revenue. The Tribunal also pursued the review of its rules of procedure, and the revised rules should be implemented before the end of fiscal year 1999-2000.

In order to facilitate the implementation of amendments that it intends to make to its processes and rules of procedure, the Tribunal, through the Tribunal/Canadian Bar Association Bench and Bar Committee, provides a forum to promote discussion on issues of importance with the bar. The committee also includes representatives from the trade community. The Tribunal recognizes the importance of communication with various groups of stakeholders, and that is why it distributes to them discussion papers and holds meetings with them to exchange views on new procedures being considered by the Tribunal prior to their adoption.

The Tribunal's Performance Report for fiscal year 1998-99 demonstrates that the Tribunal, through the various areas of its mandate, plays a key role in the government's trade and economic agenda.

Pierre Gosselin

Part II

Overview of the Canadian International Trade Tribunal

Mandate and Mission

Mandate

The Tribunal derives its authority from the *Canadian International Trade Tribunal Act* (the *CITT Act*), which received Royal Assent on September 13, 1988.

The Tribunal's mandate is to:

- conduct inquiries into whether dumped or subsidized imports have caused material injury or retardation or are threatening to cause material injury to a domestic industry;
- hear appeals of decisions of the Department of National Revenue (Revenue Canada) made under the *Customs Act*, the *Excise Tax Act* and the *Special Import Measures Act* (SIMA);
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations;
- conduct inquiries 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* (the AIT) and the World Trade Organization (WTO) *Agreement on Government Procurement* (the AGP);
- conduct safeguard inquiries into complaints by domestic producers that increased imports are causing, or threatening to cause, serious injury to domestic producers; and
- conduct inquiries 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.

Mission

The Tribunal is a key player within Canada's trade remedies system. In its quasi-judicial role, the Tribunal protects Canadian producers from two important forms of unfair competition originating in foreign countries: injurious dumping and subsidizing. The Tribunal also acts as a court of easy access for appeals from Revenue Canada decisions on customs and excise matters and for complaints regarding designated government procurement.

In its advisory role, the Tribunal assists the government, through its fact-finding inquiries, in the formulation of strategies aimed at making Canadian producers more competitive in the global trade environment. Through its textile reference, the Tribunal assists the government in determining the levels of tariffs that will ensure that economic gains for Canada are maximized in an industry that faces changing market demands.

With the emergence of a freer and more open trading system, Canada must increasingly rely on a fair and efficient trade remedies system. Through its various jurisdictions, the Tribunal contributes to the maintenance of a healthy Canadian economy and to fair trading relations with Canada's trading partners.

Operating Environment

The Tribunal is an independent quasi-judicial body that carries out its statutory responsibilities in an autonomous and impartial manner and reports to Parliament through the Minister of Finance.

The economic climate is a key external factor affecting the Tribunal's work. It is a responsive institution reacting entirely to external demand. Downturns in the domestic and global economies usually lead to the deterioration of markets and to increased competition for the remaining business. At such times, domestic producers become increasingly sensitive to competition from imports and increasingly likely to seek protection against them. This generally leads to a larger number of inquiries in response to dumping and/or subsidizing complaints under SIMA. The Tribunal's work under SIMA is of special interest and importance to domestic producers, importers, exporters, primary industrial and service sectors of the economy, and counsel and consultants active in trade matters.

NAFTA, the AIT and the AGP require signatory governments to maintain an independent bid challenge (complaint) authority. The *CITT Act* establishes the Tribunal as the complaint authority for Canada. As the bid challenge authority for federal government procurement, the Tribunal determines whether the government institution responsible for the procurement under review has met the requirements of international and national trade agreements and Canadian legislation. The Tribunal's work is, therefore, of interest to potential suppliers, as well as to federal departments and agencies, and crown corporations covered by NAFTA, the AIT and/or the AGP. Furthermore, the *Canada-Israel Free Trade Agreement* and the *Canada-Chile Free Trade Agreement* have provisions by which global safeguard inquiries in respect of goods imported from Israel and Chile can be conducted by the Tribunal.

The Tribunal also hears appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA. The Tribunal's work in this area has an impact on Canadian taxpayers, businesses, customs brokers and counsel involved in trade matters.

Pursuant to a reference from the Minister of Finance, the Tribunal investigates requests from domestic producers for tariff relief on imported textile inputs for use in their manufacturing operations and makes recommendations in respect of those requests to the Minister of Finance. The Tribunal's work under the textile reference is, therefore, of interest and importance to the apparel and textile sectors of the economy.

Finally, the Tribunal may be asked to conduct inquiries 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. Through these references, the Tribunal's work is of interest and importance to key sectors of the Canadian economy.

In addition to having an impact on external stakeholders, the Tribunal's work is of particular interest to the following federal departments: Finance, Foreign Affairs and International Trade, Revenue Canada, Agriculture and Agri-Food, Industry, and Public Works and Government Services.

Objectives

The objectives of the Tribunal's business line is to ensure that Canada can rely on a fair and efficient trade remedies system and that the government, through the Tribunal's fact-finding inquiries and standing reference, can formulate strategies aimed at making Canadian producers more competitive in the global trade environment.

Strategic Priorities

The Tribunal has established the following priorities:

- to maintain the quality of the Tribunal's findings, determinations and recommendations;
- to hear cases and make decisions expeditiously on matters that fall within the Tribunal's jurisdiction pursuant to acts of Parliament or regulations; and
- to maintain the Tribunal's independence and accessibility as a quasi-judicial organization.

Challenges

Some of the challenges facing the Tribunal include:

- to ensure that the inquiry and appeal processes of the Tribunal remain accessible and affordable to all stakeholders; and
- to implement new approaches to service delivery, in particular, the more extensive use of information technology that will allow the Tribunal to meet, with fewer resources, the externally generated demand for its services.

The Canadian International Trade Tribunal Organization

Business Line Description

Because of its mandate and structure, the Tribunal has one business line — to act as an administrative court for dumping and subsidizing inquiries, appeals from Revenue Canada decisions on customs and excise matters and procurement complaints and as an advisor to the government or the Minister of Finance on a broad range of trade, economic or tariff-related matters.

The Tribunal may be composed of up to nine full-time members, including a Chair and two Vice-Chairs, who are appointed by the Governor in Council for a term of up to five years. A maximum of five additional members may be temporarily appointed. The Chair is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work. Members come from a variety of educational backgrounds, careers and regions of the country.

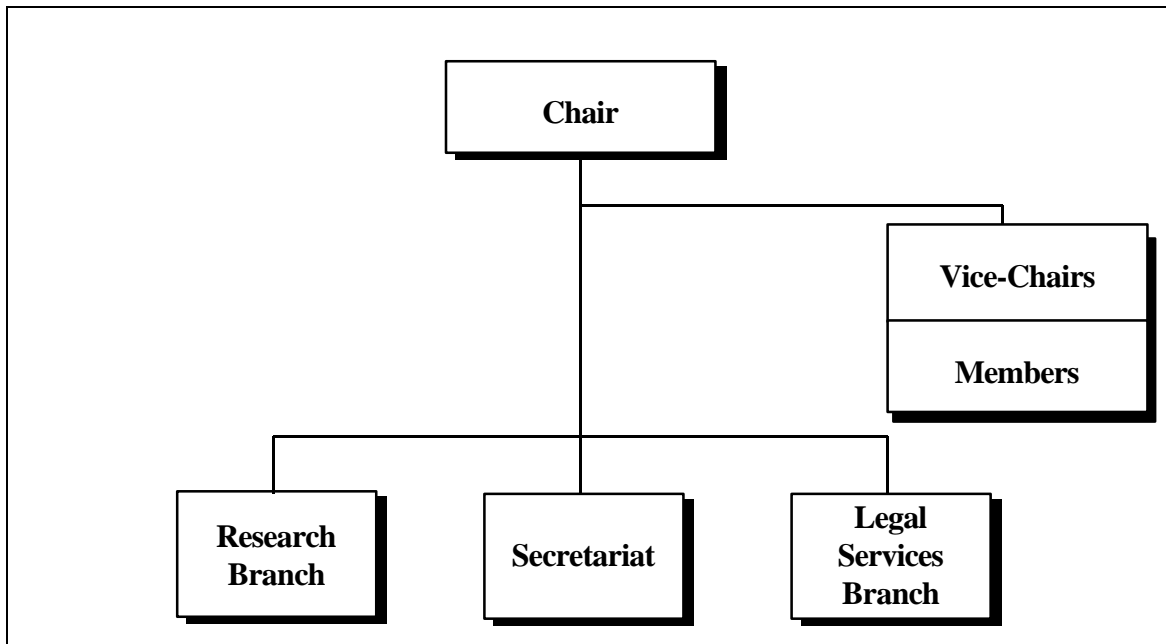
Members of the Tribunal are supported by a permanent staff of 86. Its principal officers are the Executive Director, Research, responsible for the economic and financial analysis of firms and industries, the investigation of complaints by potential suppliers concerning any aspect of the

procurement process and for other fact finding required for Tribunal inquiries; the Secretary, responsible for corporate management functions, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal; and the General Counsel, responsible for the provision of legal services to the Tribunal.

In carrying out most of its responsibilities, the Tribunal conducts hearings that are open to the public. In some instances, it may decide cases on the basis of written submissions. Hearings are normally held in Ottawa, Ontario, the location of the Tribunal's offices, although videoconferences and regional hearings are used periodically to increase accessibility to the Tribunal. The Tribunal has rules and procedures similar to those of a court of law, but not quite as formal or strict. The *CITT Act* states that hearings, conducted generally by a panel of three members, should be carried out as "informally and expeditiously" as the circumstances and considerations of fairness permit. The Tribunal has the power to subpoena witnesses and require parties to submit information, even when it is commercially confidential. The *CITT Act* contains provisions that strictly control access to confidential information.

The Tribunal's decisions may be reviewed by or appealed to, as appropriate, the Federal Court of Canada and, ultimately, the Supreme Court of Canada, or a binational panel under NAFTA, in the case of a decision affecting US and/or Mexican interests. Governments that are members of the WTO may appeal the Tribunal's decisions to a dispute settlement panel under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

Organization Structure



Part III

Performance of the Canadian International Trade Tribunal

Performance Expectations

In light of the key results identified below, the Tribunal is in a position to continue to be a key player in Canada's trade remedies system.

Provides to Canadians:	To be demonstrated by:
<p>Support of a fair and open trade system</p>	<ul style="list-style-type: none"> ➤ Upholding of the Tribunal's decisions by national and international appeal bodies. ➤ Implementation of the Tribunal's recommendations by the government. ➤ Publication of the Tribunal's decisions in a timely way. ➤ The Tribunal's decisions are viewed as fair and impartial by domestic and international stakeholders.

Performance Accomplishments

Tribunal Resource Inputs	
Financial resources:	
Planned Spending	8,932 000
<i>Total Authorities</i>	<i>8,932,000</i>
1998-99 Actuals	8,503,000

As previously stated, the economic climate is a key external factor affecting the Tribunal's work. It is a responsive institution that reacts entirely to external demand. It may not refuse any reference from the Governor in Council or the Minister of Finance, or refuse to hear any individual or firm on any matters within its jurisdiction.

The Tribunal's challenge is to support a fair and open trade system. In this context, the Tribunal's performance is assessed against the following criteria.

Upholding of the Tribunal's Decisions by National and International Appeal Bodies

The Tribunal's decisions may be reviewed by or appealed to the Federal Court of Canada, or a binational panel under NAFTA or a WTO dispute settlement panel.

Of the seven cases investigated by the Tribunal pursuant to SIMA during fiscal year 1998-99, three decisions were appealed to the Federal Court of Canada, and the appeals were all in progress at year end. As for the Tribunal's decision issued in the previous fiscal year that was appealed to the Federal Court of Canada, the appeal was discontinued. Three Tribunal decisions were also appealed to binational panels, and all three appeals were in progress at year end. As for two appeals that were in progress at the end of fiscal year 1997-98, one was dismissed by a binational panel, while the other was still in progress. No Tribunal decisions were appealed to a WTO dispute settlement panel.

As for Tribunal decisions regarding appeals from Revenue Canada decisions under the *Customs Act*, the *Excise Tax Act* and SIMA, the Federal Court of Canada dealt with 24 appeals of Tribunal decisions. The results of these appeals were as followed: 8 appeals were discontinued, 8 were dismissed and 8 were allowed.

Implementation of the Tribunal's Recommendations by the Government

As the bid challenge authority for federal government procurement, the Tribunal makes determinations which may consist of a recommendation to the government institution (such as re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant. In fiscal year 1998-99, the Tribunal made 24 determinations, 10 of which included recommendations. Eight of these recommendations were implemented by the government institution.

The Federal Court of Canada dismissed applications by both the Attorney General of Canada and an intervener to review a Tribunal decision. In another procurement case in which the Department of Public Works and Government Services decided not to implement the Tribunal's recommendation to award the contract at issue to the complainant, the Federal Court of Canada quashed the decision not to implement and ordered the Department of Public Works and Government Services to implement the Tribunal's recommendation.

As for its mandate under the textile reference, the Tribunal makes recommendations to the Minister of Finance on whether or not tariff relief should be granted on imported textile inputs. Twelve recommendations were issued to the Minister of Finance in 1998-99, and all recommendations were implemented by the Minister of Finance.

Publication of the Tribunal's Decisions in a Timely Way

The Tribunal's decisions regarding dumping and/or subsidizing and procurement complaints are subject to statutory deadlines. In fiscal year 1998-99, 33 decisions were issued covering these two areas of the Tribunal's mandate. All decisions were issued within the statutory deadlines.

As for appeals of Revenue Canada decisions, the Tribunal issued 90 decisions. The Tribunal's objective is to issue its decisions within 120 days of the hearing. The Tribunal did not systematically meet the 120-day deadline. Due to its diversified mandate, the Tribunal must ensure that those areas of its mandate that are subject to statutory deadlines are dealt with on a

priority basis. The Tribunal's decisions regarding appeals of Revenue Canada decisions are not subject to statutory deadlines and must, in certain circumstances, be delayed in order to meet statutory requirements in other areas of its mandate.

Tribunal's Decisions are Viewed as Fair and Impartial by Domestic and International Stakeholders

The Tribunal has established a Bench and Bar Committee to promote discussion on issues of importance with the Canadian Bar Association and trade consultants. Meetings are held on a quarterly basis and allow participants to present their views and concerns about the Tribunal's processes and procedures and allow the Tribunal to seek the views of stakeholders on proposed initiatives.

The Tribunal also communicates with its stakeholders to seek their views when considering the introduction of new procedures. It also issues practice notices and guidelines to convey its new procedures to the community at large.

These consultative mechanisms, therefore, allow the Tribunal to remain accessible to various groups of stakeholders and to take advantage of their points of view. The Tribunal's processes and procedures have benefited from stakeholders' comments and suggestions.

Service Delivery

The Tribunal offers services to the public in both official languages. Such services include the provision of information to the public regarding the Tribunal's mandate and functions, over-the-counter services, written and oral communications with the public and the reception of documents relevant to eventual proceedings before the Tribunal.

The Tribunal continues to make significant efforts to enhance service delivery to its stakeholders. Enhancements have included providing access to information on the Tribunal and its publications, notices of inquiry and decisions using the electronic medium. All decisions issued by the Tribunal since its establishment in December 1988 are available on its Web site. The Tribunal also has a service that advises interested parties, via E-mail, that new documents have been posted on its Web site.

The Tribunal is also pursuing its efforts to implement a secure communications package that will allow the more expeditious transmission of information between the Tribunal and parties in inquiries. Finally, the Tribunal will carry out, during fiscal year 1999-2000, a pilot project on the automation of the administrative record in its proceedings.

Part IV

Consolidated Reporting

Year 2000 Readiness

The Tribunal's corporate systems (human resources information system and financial information system), as well as applications that make up its office automation suite, are not a concern regarding the Tribunal's year 2000 compliance.

During fiscal year 1999-2000, the Tribunal will develop a contingency plan that will allow it to deal effectively with problems that could arise in relation to the year 2000.

Part V

Financial Performance

Financial Performance Overview

The Tribunal started the year with authorities of \$8.1 millions. Supplementary estimates in the amount of 796,000 were then approved for the carry-forward of previous years' lapse, thereby increasing total authorities to \$8.9 millions. In 1998-99 the Tribunal spent \$8.5 millions of its \$8.9 millions total authorities. The lapse of approximately 400,000 is due primarily to delays in staffing vacant positions during the course of the year.

Financial Summary Table

The following financial tables apply to the Canadian International Trade Tribunal.

Financial Table 1

Financial Requirements by Authority (thousands of dollars)

Vote		1998-99		
		Planned Spending	Total Authorities	Actual
Canadian International Trade Tribunal				
35	Operating Expenditures	6,951	7,687	7,258
(S)	Contributions to Employee Benefit Plan	1,185	1,245	1,245
Total		8,136	8,932	8,503

Total authorities are Main Estimates plus Supplementary Estimates plus other authorities.

Financial Table 2

**Comparison of Total Planned Spending to Actual Spending
Departmental Planned versus Actual Spending
(thousands of dollars)**

Business Line	1998-99		
	Planned	Total Authorities	Actual
Canadian International Trade Tribunal			
FTEs	94	94	86
Operating	8,136	8,932	8,503
Total Net Expenditures	8,136	8,932	8,503
Other Revenues and Expenditures			
Cost of services provided by other departments	2,154	2,154	1,990
Net Cost of the Program	10,290	11,086	10,493

Total authorities are Main Estimates plus Supplementary Estimates plus other authorities.

Financial Table 3

**Historical Comparison of Total Planned Spending to Actual Spending
(thousands of dollars)**

Business Line	Actual 1996-97	Actual 1997-98	Planned Spending 1998-99	Total Authorities 1998-99	Actual 1998-99
Canadian International Trade Tribunal	8,085	7,793	8,136	8,932	8,503
Total	8,085	7,793	8,136	8,932	8,503

Total authorities are Main Estimates plus Supplementary Estimates plus other authorities.

Part VI

Other Information

Contact for Further Information and Web Site

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
17th Floor
Ottawa, Ontario
K1A 0G7

Telephone No.: (613) 993-3595
Telecopier No.: (613) 998-1322
E-Mail: secretary@citt.gc.ca

Tribunal's Web Site: www.citt.gc.ca

Legislation Governing the Work of the Canadian International Trade Tribunal

<i>Canadian International Trade Tribunal Act</i>	R.S.C. 1985 (4th Supp.), c. 47
<i>Customs Act</i>	R.S.C. 1985 (2d Supp.), c. 1
<i>Excise Tax Act</i>	R.S.C. 1985, c. E-15
<i>Special Import Measures Act</i>	R.S.C. 1985, c. S-15
<i>Softwood Lumber Products Export Charge Act</i>	R.S.C. 1985 (3d Supp.), c. 12
<i>Energy Administration Act</i>	R.S.C. 1985, c. E-6
<i>Canadian International Trade Tribunal Regulations</i>	S.O.R./89-35
<i>Canadian International Trade Tribunal Procurement Inquiry Regulations</i>	S.O.R./93-602
<i>Canadian International Trade Tribunal Rules</i>	S.O.R./91-499

In addition, the following agreements also impact on the Tribunal's work:

Agreement on Internal Trade
North American Free Trade Agreement
Canada-Israel Free Trade Agreement
Canada-Chile Free Trade Agreement
World Trade Organization Agreements

List of Statutory and Tribunal Reports

Annual Reports

- 1989-90 to 1998-99

Annual Status Reports

- Textile Reference: Annual Status Report - October 1, 1994, to September 30, 1995
- Textile Reference: Annual Status Report - October 1, 1995, to September 30, 1996
- Textile Reference: Annual Status Report - October 1, 1996, to September 30, 1997
- Textile Reference: Annual Status Report - October 1, 1997, to September 30, 1998

Bulletins

Guides

- *Introductory Guide on the Canadian International Trade Tribunal*
- *Procurement Cost Guidelines*
- *Procurement Review Process - A Descriptive Guide*
- *Textile Reference Guide*

Pamphlets

- *Information on Appeals from Customs, Excise and SIMA Decisions*
- *Information on Dumping and Subsidizing Inquiries and Reviews*
- *Information on Economic, Trade and Tariff Inquiries*
- *Information on Import Safeguard Inquiries and Measures*
- *Information on Procurement Review*
- *Information on Textile Tariff Investigations*