

Canadian International Trade Tribunal

Departmental Performance Report

**For the
period ending
March 31, 2000**

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**Paul Martin
Minister of Finance**

Table of Contents

| | |
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| Part I — Chairman’s Message | 1 |
| Part II — Performance of the Canadian International Trade Tribunal | 3 |
| Societal Context..... | 3 |
| Objectives..... | 4 |
| Strategic Priorities | 4 |
| Challenges | 4 |
| Performance Expectations..... | 5 |
| Performance Accomplishments..... | 5 |
| Upholding of the Tribunal’s Decisions by National and International Appeal Bodies | 5 |
| Implementation of the Tribunal’s Recommendations by the Government | 6 |
| Publication of the Tribunal’s Decisions in a Timely Way..... | 6 |
| Tribunal’s Decisions are Viewed as Fair and Impartial by Domestic and International Stakeholders..... | 7 |
| Presentation of Financial Information..... | 7 |
| Service Improvement Initiative..... | 7 |
| Part III — Financial Performance | 9 |
| Financial Performance Overview..... | 9 |
| Financial Summary Tables | 9 |
| Financial Requirements by Authority..... | 9 |
| Comparison of Total Planned Spending to Actual Spending..... | 10 |
| Historical Comparison of Departmental Planned versus Actual Spending | 10 |
| Part IV — Overview of the Canadian International Trade Tribunal | 11 |
| Mandate and Mission | 11 |
| Mandate..... | 11 |
| Mission..... | 11 |
| Canadian International Trade Tribunal Organization | 12 |
| Business Line Description | 12 |
| Organization Structure..... | 13 |
| Part V — Other Information | 15 |
| Contact for Further Information and Web Site..... | 15 |
| Legislation Governing the Work of the Canadian International Trade Tribunal | 15 |
| List of Statutory and Tribunal Reports..... | 16 |

Part I — Chairman's Message

I am pleased to present the Performance Report of the Canadian International Trade Tribunal (the Tribunal) for fiscal year 1999-2000. 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 (now the Canada Customs and Revenue Agency), 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 1999-2000.

I am pleased to report that the Tribunal completed, in fiscal year 1999-2000, a number of initiatives that will ensure that its processes and rules of procedure reflect the legislative amendments (Bill C-35) to the *Special Import Measures Act* and the *Canadian International Trade Tribunal Act* that will come into force on April 15, 2000. In order to familiarize stakeholders with those changes, the Tribunal has prepared a series of interim guidelines dealing with preliminary injury inquiries, public interest inquiries, interim reviews and expiry reviews.

The Tribunal's Performance Report for 1999-2000 demonstrates its commitment to supporting a fair and open trade system.

Pierre Gosselin

Part II — Performance of the Canadian International Trade Tribunal

Societal Context

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 the *Special Import Measures Act* (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.

The *North American Free Trade Agreement* (NAFTA), the *Agreement on Internal Trade* (AIT) and the *Agreement on Government Procurement* (AGP) require signatory governments to maintain an independent bid challenge (complaint) authority. The *Canadian International Trade Tribunal Act* (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 Canada Customs and Revenue Agency 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 standing 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, Canada Customs and Revenue Agency, Agriculture and Agri-Food, Industry, and Public Works and Government Services.

Objectives

The objectives of the Tribunal's business line are 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 references, 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;
- 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; and
- to ensure the smooth implementation of the legislative amendments (Bill C-35) to SIMA and the CITT Act.

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: |
|--|---|
| 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. |

Performance Accomplishments

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 World Trade Organization (WTO) dispute settlement panel.

Of the 12 cases investigated by the Tribunal pursuant to SIMA during fiscal year 1999-2000, 2 decisions were appealed to the Federal Court of Canada, and the appeals were all in progress at year end. As for the Tribunal's 3 decisions issued in the previous fiscal year that were appealed to the Federal Court of Canada, in one case, the Tribunal's decision was affirmed, in the other, the appeal was discontinued and, in the third, the appeal was still in progress at the end of the fiscal year. As for appeals to binational panels that were in progress at the end of fiscal year 1998-99, the Tribunal's decision was affirmed in each

case by a binational panel, while the others were still in progress at year end. No Tribunal decisions were appealed to a WTO dispute settlement panel.

As for Tribunal decisions regarding appeals from Canada Customs and Revenue Agency decisions under the *Customs Act*, the *Excise Tax Act* and SIMA, the Federal Court of Canada dealt with 20 appeals of Tribunal decisions. The results of these appeals were as followed: 7 appeals were discontinued, 10 were dismissed, 2 were allowed and 1 was allowed in part.

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 1999-2000, the Tribunal made 27 determinations, 12 of which included recommendations. Of these recommendations, 10 were implemented by the government institution, while 2 are held in abeyance pending the outcome of applications for judicial review.

The Federal Court of Canada dismissed three applications to review a Tribunal decision. Four other applications were discontinued, and four were in progress at year end.

As for its mandate under the textile reference, the Tribunal makes recommendations to the Minister of Finance on whether tariff relief should be granted on imported textile inputs. Six recommendations relating to eight requests for tariff relief were issued to the Minister of Finance in 1999-2000, 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 1999-2000, 34 decisions were issued covering these two areas of the Tribunal's mandate. All decisions were issued within the statutory deadlines.

As for appeals of Canada Customs and Revenue Agency decisions, the Tribunal issued 64 decisions. The Tribunal's objective is to issue its decisions, which are not subject to statutory deadlines, 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.

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 allow the Tribunal to remain accessible to various groups of stakeholders and to take advantage of their points of view. The Tribunal has benefited from stakeholders' comments and suggestions regarding processes and procedures.

Presentation of Financial Information

| Canadian International Trade Tribunal | |
|--|------------------|
| Planned Spending | 8,486,000 |
| <i>Total Authorities</i> | <i>8,993,000</i> |
| Actuals | 8,707,000 |

Service Improvement Initiative

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 2000-2001, a pilot project on the automation of the administrative record in its proceedings.

Part III — Financial Performance

Financial Performance Overview

The Tribunal started the year with authorities of \$8.5 million. Supplementary estimates in the amount of \$75,000 were then approved to allow the carry-forward of the previous years' lapses. Treasury Board approved a sum of \$171,000 for the negotiated salary increases, a sum of \$17,000 for the Financial Strategy Initiative, a sum of \$45,000 for the conversion factor, as well as a \$19,000 transfer originating from the Department of Justice for the Conflict Resolution Initiative. Finally, an additional sum of \$180,000 was paid for the Employee Benefit Initiative, thereby increasing the authorities to \$8.9 million. In 1999-2000, the Tribunal spent \$8.7 million of its total authorities of \$8.9 million. The surplus of approximately \$200,000 is primarily due to delays incurred when implementing certain initiatives, as well as to the fact that two projects had to be postponed until the following fiscal year.

Financial Summary Tables

Financial Table 1

Financial Requirements by Authority (thousands of dollars)

| Vote | 1999-2000 | | | |
|--|--|----------------------|--------------|--------------|
| | Planned Spending | Total Authorities | Actual | |
| Canadian International Trade Tribunal | | | | |
| 35 | Operating Expenditures | 7,312 | 7,639 | 7,353 |
| (S) | Contributions to Employee Benefit Plan | 1,174 | 1,354 | 1,354 |
| Total | | 8,486 | 8,993 | 8,707 |

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 | 1999-2000 | | |
|--|------------------|--------------------------|---------------|
| | Planned | Total Authorities | Actual |
| Canadian International Trade Tribunal | | | |
| FTEs | 94 | 94 | 86 |
| Operating | 8,486 | 8,993 | 8,707 |
| Total Net Expenditures | 8,486 | 8,993 | 8,707 |
| Other Revenues and Expenditures | | | |
| Non-respendable Revenues | 0 | 0 | (1) |
| Cost of services provided by other departments | 1,938 | 1,938 | 1,939 |
| Net Cost of the Program | 10,424 | 10,877 | 10,645 |

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

Financial Table 3

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

| Business Line | 1999-2000 | | | | |
|--|-----------------------|-----------------------|-------------------------|--------------------------|---------------|
| | Actual 1997-98 | Actual 1998-99 | Planned Spending | Total Authorities | Actual |
| Canadian International Trade Tribunal | 7,793 | 8,136 | 8,486 | 8,993 | 8,707 |
| Total | 7,793 | 8,136 | 8,486 | 8,993 | 8,707 |

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

Part IV — Overview of the Canadian International Trade Tribunal

Mandate and Mission

Mandate

The Tribunal derives its authority from 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 Canada Customs and Revenue Agency made under the *Customs Act*, the *Excise Tax Act* and 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 NAFTA, the AIT and 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 Canada Customs and Revenue Agency 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.

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 Canada Customs and Revenue Agency 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.

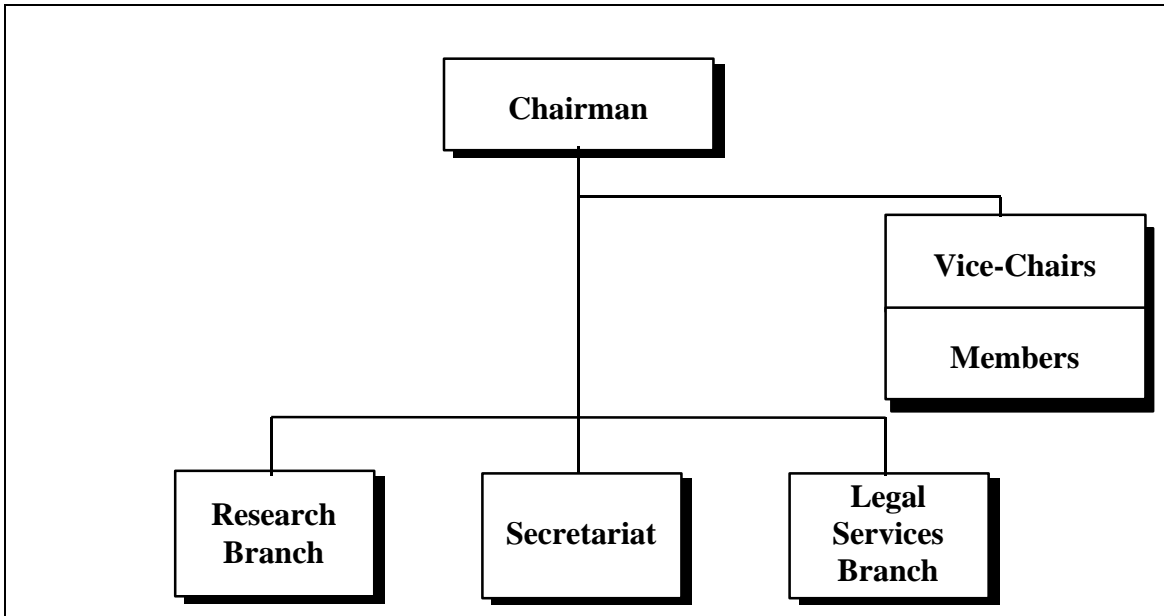
The Tribunal may be composed of up to nine full-time members, including a Chairman and two Vice-Chairs, who are appointed by the Governor in Council for a term of up to five years. A maximum of five additional members may be temporarily appointed. The Chairman is the Chief Executive Officer responsible 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 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; 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; 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 V — 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
Fax 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 Report

- 1989-90 to 1999-2000

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
- Textile Reference: Annual Status Report - October 1, 1998 to September 30, 1999

Bulletin

1995-2000

Guides

- Introductory Guide on the Canadian International Trade Tribunal
- 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