

Introductory

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# GUIDE

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on the Canadian International  
Trade Tribunal

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL



TRIBUNAL CANADIEN  
DU COMMERCE  
EXTÉRIEUR



MISSION

Supporting a Fair and  
Open Trade System

**Canadian International  
Trade Tribunal**

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## ABOUT THE CANADIAN INTERNATIONAL TRADE TRIBUNAL

In the 1990s, approximately 30 percent of Canada's gross domestic product stems from international trade. Although Canada has always been a major exporting nation, trade is becoming ever more important through globalization of the world economy and the opening of new markets in developing countries and Eastern Europe. In addition, the development of new products and easier access to transportation and telecommunications now allow more small- and medium-sized businesses to compete in the international marketplace.

Canada's international trade is increasingly governed by international agreements, such as the *North American Free Trade Agreement* (NAFTA) and the *Agreement Establishing the World Trade Organization* (the WTO Agreement). Trade within Canada is now promoted by agreements such as the *Agreement on Internal Trade* (the AIT), between the federal government and the provincial and territorial governments.

The Canadian International Trade Tribunal (the Tribunal) has been given certain powers relating to trade remedies by the Government of Canada. The Tribunal determines if Canadian producers suffer injury from unfair dumping and subsidizing of imported goods. The Tribunal also hears appeals from people who disagree with decisions of the Department of National Revenue (Revenue Canada) on certain excise taxes and customs duties and with decisions made under the provisions of the *Special Import Measures Act* (SIMA). It conducts inquiries and provides advice on economic, trade and tariff issues. The Tribunal also investigates requests from domestic producers for tariff relief on certain imported textile inputs used in, or which may be used in, their manufacturing operations. In addition, the Tribunal conducts inquiries into complaints by potential suppliers that believe that they have been treated unfairly in the solicitation, evaluation and award of federal government contracts.

The Tribunal is a quasi-judicial body which has rules and procedures similar to those of a court of law, but they are not quite as strict or formal. The Tribunal is an independent body and is not part of any federal government department or agency. It carries out its responsibilities in an open, fair and impartial manner.

The Tribunal reports to Parliament through the Minister of Finance. Several acts of Parliament give the Tribunal powers to carry out its mandate.

## MAIN SOURCES OF CANADIAN LAW GOVERNING THE WORK OF THE TRIBUNAL

- the *Canadian International Trade Tribunal Act* (CITT Act) and its Regulations;
- the *Canadian International Trade Tribunal Rules*;
- SIMA and its Regulations;
- the *Customs Act* and the *Customs Tariff*; and
- the *Excise Tax Act*.

### **The Tribunal's Mandate**

The Tribunal's mandate covers both judicial and advisory functions. It:

- conducts inquiries into whether dumped or subsidized imports (see definitions on page 4) have caused, or are threatening to cause, material injury to a domestic industry;
- hears and decides appeals of Revenue Canada decisions made under the *Customs Act*, the *Excise Tax Act* and SIMA;
- conducts inquiries and provides advice on such economic, trade and tariff issues as are referred to the Tribunal by the Governor in Council or the Minister of Finance;
- investigates requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations;
- conducts safeguard inquiries into complaints by domestic producers that increased imports are causing, or are threatening to cause, serious injury to domestic producers; and
- conducts inquiries into complaints by potential suppliers concerning procurement by the federal government that is covered by NAFTA, the *WTO Agreement on Government Procurement* (the AGP) and the AIT.

### **Tribunal Operations**

The Tribunal conducts hearings that are open to the public. These hearings are usually held at the Tribunal's offices in Ottawa, Ontario, but they may also be held elsewhere in Canada or by videoconference.

The Tribunal's hearings are generally conducted by a panel of three members. In some circumstances, however, a single member may conduct a hearing. The Tribunal tries to ensure that these hearings are conducted as quickly and informally as fairness will permit. The Tribunal has the power to subpoena witnesses and require parties to submit information, even if it is commercially confidential. The CITT Act contains provisions that strictly control access to confidential information.

## Reviews and Appeals of Tribunal Decisions

Parties to a case have the right to have Tribunal decisions either reviewed by or appealed to the Federal Court of Canada and, ultimately, the Supreme Court of Canada. In the case of a SIMA decision affecting US and/or Mexican interests, Tribunal decisions involving dumping or subsidizing allegations may be reviewed by the Federal Court of Canada or by a binational panel under the provisions of NAFTA. Foreign governments that are members of the WTO may also appeal certain Tribunal decisions to the WTO. This step must be preceded by intergovernmental consultations.



## Tribunal Members and Senior Officers

The Tribunal may be composed of nine full-time members who are appointed by the Governor in Council for a term of up to five years. Where circumstances warrant, additional members may be appointed temporarily. Members come from a variety of educational backgrounds, careers and regions of the country.

The Tribunal is supported by a staff of about 90 people. Its principal officers are:

- the **Secretary**, who is responsible for administration, relations with the public, dealings with other government departments and other governments, and the court registrar functions of the Tribunal;
- the **Executive Director, Research**, who is responsible for the economic and financial analysis of firms and industries and for other fact finding required for Tribunal inquiries;
- the **General Counsel**, who is responsible for providing legal services to the Tribunal; and
- the **Director of the Procurement Review Division**, who is responsible for investigating complaints by potential suppliers about any aspect of the procurement process.



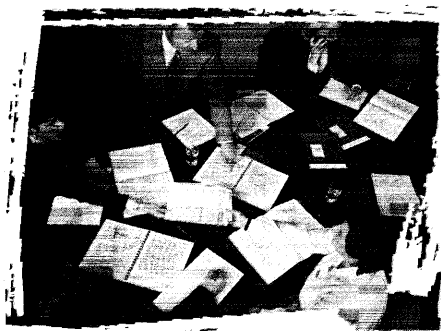
## Impact of Recent Developments

On January 1, 1994, the legislation implementing NAFTA resulted in amendments to the CITT Act, SIMA, the *Customs Act* and the *Customs Tariff*. NAFTA changed agreements regarding judicial review and appeals of orders and findings of the Tribunal. Changes were also made to the legislation giving the Tribunal the responsibility of receiving complaints about certain aspects of the federal government procurement process.

On April 15, 1994, more than 120 countries adopted the agreements establishing the WTO. This comprehensive revision of international trade rules changed agreements on textiles and clothing, subsidies and countervailing duties, anti-dumping duties, procurement, safeguards (measures that protect Canadian producers regarding unfair surges of imports) and dispute settlement.

Effective January 1, 1995, consequential amendments to Canadian legislation and regulations came into effect.

The AIT between the provinces and territories and the federal government requires open bidding across Canada for government procurement of goods and services. Contracts for goods or services over specified monetary thresholds are covered by the AIT. Effective July 1, 1995, the Tribunal was



given authority to review bid challenges under the AIT for federal government procurements. The WTO/AGP also requires that each country establish a bid challenge mechanism for covered procurements. The Tribunal was given responsibility for this bid challenge mechanism for Canada effective January 1, 1996.

## DUMPING AND SUBSIDIZING INQUIRIES AND REVIEWS

International trade agreements and Canadian legislation allow Revenue Canada to impose duties on imported goods when Canadian producers are adversely affected by unfair international competition. These measures apply where the imported goods:

- are sold at a price lower than in the home market or lower than the cost of production (dumping), or
- receive benefits from certain types of government grants or other assistance (subsidizing).

## **The Tribunal's Role**

International trade agreements allow a country to take action against dumped or subsidized imports when they adversely affect domestic producers. In Canada, this is a two-part process.

Initially, the Deputy Minister of National Revenue determines whether dumping or subsidizing is occurring. If either is taking place, provisional anti-dumping or countervailing duties may be imposed pending the outcome of the Tribunal's inquiry. The Tribunal's role is to determine if dumping or subsidizing has caused material injury or is threatening to cause material injury.

The Tribunal conducts investigations and public hearings to make this determination. At the public hearing, the domestic producers attempt to persuade the Tribunal that material injury has occurred or is threatening to occur. Other interested parties may also present evidence and question witnesses.

The Tribunal then issues its finding. If the Tribunal makes a finding of material injury, Revenue Canada continues to impose anti-dumping or countervailing duties on the dumped or subsidized imports.

The Tribunal may review its findings of injury at any time, on its own initiative or at the request of an interested party.

Anti-dumping and countervailing duty decisions can be judicially reviewed by the Federal Court of Canada. In cases involving goods from the United States and Mexico, judicial review by the Federal Court of Canada may be replaced by a binational panel review under the provisions of NAFTA.

## **APPEALS**

Revenue Canada applies various taxes and duties under the *Excise Tax Act*, the *Customs Act* and SIMA. Individuals, as well as businesses, do not always agree with decisions made by Revenue Canada regarding the imposition of these duties and taxes. In some cases, they have the right to appeal these decisions to the Tribunal.

### **The Tribunal's Role**

The Tribunal is a court of record that hears and decides appeals from the decisions of Revenue Canada.

The Tribunal reviews briefs received from the person launching the appeal (the appellant) and from the Deputy Minister of National Revenue (the respondent) outlining their respective positions. Other people with an interest in the case (interveners) may also be allowed to participate in an appeal. Interveners must follow the same procedures as the other parties. The Tribunal may hold public hearings where both the appellant and the respondent and any interveners are represented. If a public hearing is not required and both the appellant and respondent and interveners, if any, agree, the Tribunal makes its decision based on the written submissions.

If one of the parties disagrees with the Tribunal's decision, the party can appeal the decision to the Federal Court of Canada.

## TEXTILE TARIFF INVESTIGATIONS

The CITT Act permits the Minister of Finance to ask the Tribunal to conduct inquiries into any trade-related matters. In 1994, the Minister of Finance directed the Tribunal to investigate requests from domestic producers for tariff relief on imported textile inputs that they use in their manufacturing operations.

### **The Tribunal's Role**

The Tribunal acts in an advisory capacity when a domestic producer of textiles or apparel applies for tariff relief on certain imported textile inputs used, or proposed to be used, for production.

Once a request is properly documented, the Tribunal issues a notice of commencement of investigation.

Tribunal staff gathers information primarily through questionnaires and submissions made by parties. Where necessary, it conducts its own research. In most cases, a public hearing is not required and the Tribunal's report is based on information in the written record.

Normally, the Tribunal issues its recommendations, with reasons, to the Minister of Finance within 120 days of the commencement of the investigation. It may recommend tariff relief for a specific or indeterminate period of time, or no relief at all.

The Governor in Council, on the recommendation of the Minister of Finance, makes an order for tariff relief. The Tribunal may review the order,



at the request of an interested party, in order to recommend its renewal or amendment.

## PROCUREMENT REVIEW

Potential suppliers that believe that they may have been treated unfairly during the solicitation or evaluation of bids may make a formal complaint to the Tribunal. This also applies to bid awards. First, however, the potential supplier may try to resolve the issue with the federal government institution responsible for the procurement.



### **The Tribunal's Role**

When the Tribunal accepts a complaint, the government institution and other interested parties are notified that a complaint has been made. If the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding it until the Tribunal makes its decision. The government has the authority to override this decision in cases involving urgency or which are contrary to the public interest.

The Tribunal first initiates a file hearing. Frequently, it conducts an investigation and sends its report to the parties for comment. After information has been collected, the Tribunal decides whether an oral hearing should be held.

The Tribunal then makes a determination, which may include such recommendations as re-tendering, re-evaluating or providing compensation, and informs the other parties involved. Recommendations made by the Tribunal are to be implemented by the government institution in question to the greatest extent possible.

## INTERACTING WITH THE TRIBUNAL

This brochure is part of a series of documents which describe the work of the Tribunal. Others in the series include:

- ▶ Information on Dumping and Subsidizing Inquiries and Reviews

- Information on Appeals from Customs, Excise and SIMA Decisions
- Information on Textile Tariff Investigations
- Information on Procurement Review

These documents provide general information only. When interpreting and applying the law, readers should refer to the CITT Act, its Regulations, the statutes that the Tribunal administers and the *Canadian International Trade Tribunal Rules*.

The Office of the Secretary of the Tribunal will provide more detailed information on the handling of individual cases. For more information, dial **(613) 993-3595**.

***Internet, Bulletin Board Service and Factsline 24 hours a day, 7 days a week***

The Tribunal operates a Web site on the Internet. The site provides general information about the Tribunal, publications of the Tribunal, as well as notices, appeal decisions, advices, findings, orders, statements of reasons, procurement review determinations and textile recommendations. The Tribunal's Web site address is **www.citt.gc.ca**.

The Tribunal also operates an electronic bulletin board service (BBS) containing the following publications: notices, appeal decisions, advices, findings, orders, statements of reasons, procurement review determinations and textile recommendations. Dial either **(613) 990-7605** or **(613) 993-0722**.



The Tribunal's Factsline also makes available the publications listed above. This service can be accessed by dialing **(613) 956-7139** using a telecopier telephone and requesting document 1196, which is an index of the documents available.

### **The Bulletin**

In addition to obtaining information from the Web site, the BBS and Factsline, the Tribunal publishes the *Bulletin*, which is also provided on the Tribunal's Web site. This quarterly report provides brief descriptions of decisions issued, cases under consideration, appeal withdrawals, notice of hearings and other information about cases appealed or referred to the Tribunal. To be added to the mailing list, dial **(613) 993-3595**.