

MINUTES
BENCH & BAR
28 September, 2005
17th Floor Boardroom
CANADIAN INTERNATIONAL TRADE TRIBUNAL

In attendance:

Pierre Gosselin	Michael Ciavaglia (Justice)	Glenn A. Cranker
Hélène Nadeau	Susan D. Clarke (PWGSC)	(Stikeman Elliott)
Robert Paquet	Christianne Laizner (PWGSC)	Ron Cheng (Osler, Hoskin
Sandy Greig	Peter Clark (Grey Clark & Assoc.)	& Harcourt)
Patricia Close	Larry Herman (Cassels, Brock &	Richard Gottlieb (Gottlieb
Reagan Walker	Blackwell)	& Pearson)
		Greg Kanargelidis (Blake
		Cassels)
		Riyaz Dattu (McCarthy
		Tétrault)
		Dalton Albrecht (Fraser
		Milner Casgrain)

1. FILING AND SERVING DOCUMENTS IN ELECTRONIC FORM

Tribunal staff made a presentation on the above matter to initiate consultations with a view to develop a protocol for the safe electronic filing of documents to make ToolKit fully accessible to outside parties.

Toolkit is a digital copy of the paper record, with search capability. It is currently an internal CITT system but the Tribunal is planning to make it available to outside parties. There is however a need to implement a secure channel for filing and accessing protected documents as well as developing a protocol for redacted documents.

Given shortcomings identified during the investigation of a breach of confidential information, (i.e. Metadata Assistant makes redacted information visible again - even in PDF; masked information can be restored) the Tribunal, in June 2005, issued a direction on the matter:

- For protected documents, electronic mail or fax should not be used.
- For redacted documents, electronic mail should not be used but such documents can be faxed from hard-copy originals only.

Tribunal staff also pointed out that for questionnaires, parties must choose whether to file the hard copy or the electronic version, but not both. The Tribunal can no longer be responsible for reviewing the two versions for consistency. On the other hand, both hard copy and electronic versions (diskette or CD-ROM) are still required for case briefs, requests for product exclusions, and replies thereto

The following problems need to be resolved prior to allowing e-filing at the Tribunal:

- the use of masking in redacted documents. Confidential information is still searchable;
- Metadata Assistant; and
- Scanned PDF documents from paper versions (CITT's electronic versions of staff reports are scanned but pixels take a huge amount of server space, bandwidth, and cause problems with searching).

The Tribunal will propose a performance-based protocol for e-transmission of documents, involving:

- destructive redaction;
- a secure channel for filing confidential information; and
- a revised declaration and undertaking that would reflect the added responsibilities with respect to the protection of confidential information in redacted documents.

A secure channel will also be implemented to allow secure channel transfers (a document filing system, with 256 bit encryption, on end-to-end communications). It would be used for e-questionnaires..

The United States International Trade Commission is testing, internally, a system for e-filing confidential business information. The Secretary may visit the Commission to see how their system works.

Bar representatives pointed out that they favour making ToolKit accessible to all parties to a file and not just to counsel as it would decrease the cost for their clients. They also indicated that once ToolKit is accessible they would not need the paper record anymore.

Next Steps

- Protocol – consultations with the Trade law community at large;
- Small pilot with counsel;
- Declaration and undertaking revision;
- Web-based public toolkit.

Time frame: summer 2006.

2. EXCLUSION REQUESTS

- A committee member expressed the view that, under the new procedures, there is a timing problem, because a request for, or a response to, an exclusion has to be filed before the outcome of the case is known. It is also hard to demarcate a line between exclusion and injury when the full record is not developed. This creates a

fairness issue, particularly where the goods in the complaint have been described broadly.

3. POST-HEARING WRITTEN SUBMISSIONS

- Another committee member expressed the view that the Tribunal's current practice of holding "restrained" oral hearings may necessitate additional written submissions following the hearing.
- Such post-hearing filings could be along the following lines:
 - brief limited to 20-30 pages;
 - two-day filing period;
 - Simultaneous filings for both sides.

4. CHINESE SAFEGUARD PROCEDURES

- The Tribunal commented that the time-frame for the conduct of a China safeguard inquiry is short and it is looking for ways to streamline the process. It will look at the matter internally but may go outside for advice as well.