

Canadian International Trade Tribunal

Departmental Performance Report

**For the
period ending
March 31, 2003**

Canadian International Trade Tribunal

Departmental Performance Report

**For the
period ending
March 31, 2003**

**Maurizio Bevilacqua
Maurizio Bevilacqua
Secretary of State
International Financial
Institutions**

Table of Contents

Part I — Chairperson’s Message	1
Part II — Context and Performance	3
Context.....	3
Organization	3
Mandate	3
Business Line Description	4
Operating Environment	4
Modern Management.....	5
Strategic Outcome	8
Performance	8
Part III — Annexes	11
Annex I — Financial Performance	11
Financial Performance Overview	11
Financial Summary Tables	11
Annex II — Other Information	13
Contact for Further Information and Web Site.....	13
Legislation Governing the Work of the Canadian International Trade Tribunal	13
List of Statutory and Tribunal Reports	13

Part I — Chairperson’s Message

I am pleased to present the Departmental Performance Report of the Canadian International Trade Tribunal for fiscal year 2002-2003.

Under its mandate, 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 World Trade Organization agreements, the *Canada-Israel Free Trade Agreement*, the *Canada-Chile Free Trade Agreement*, the *Canada-Korea Agreement on the Procurement of Telecommunications Equipment* and the *Agreement on Internal Trade*.

The Tribunal’s main challenge, as a quasi-judicial organization, remains the same: to effectively coordinate an externally generated workload, while meeting statutory deadlines. The workload is made up of dumping and/or subsidizing inquiries, appeals of decisions of the Canada Customs and Revenue Agency, procurement complaints, tariff relief requests, and references from the government directing the Tribunal to inquire and provide advice on economic, trade and tariff issues.

Fiscal year 2002-2003 has not been any different. On March 21, 2002, the Governor in Council, on the recommendation of the Minister of Finance and the Minister for International Trade, directed the Tribunal to inquire into and to report on the importation of certain steel goods and to submit its report and recommendations on August 19, 2002. This reference represents the most extensive inquiry undertaken by the Tribunal since its establishment in December 1988. Considering the scope of the inquiry and the deadline for completing it, the Tribunal had to reassess its procedures and work methods in order to be able to meet the established deadline. I am happy to report that the Tribunal successfully adapted its processes in order to meet the requirements of the inquiry and the deadlines established by the Governor in Council, while carrying out concurrently the workload associated with the other areas of its mandate.

During fiscal year 2002-2003, Bill C-50 amended the *Canadian International Trade Tribunal Act*. Amendments were also made to the *Canadian International Trade Tribunal Regulations*. These amendments, which came into force in September 2002, were made to reflect one of the concessions by the People’s Republic of China as part of its accession to the World Trade Organization. As a result, the Tribunal can initiate bilateral safeguard inquiries. In order to facilitate access by domestic producers to these new safeguard mechanisms, the Tribunal has prepared a guideline and guides.

Chapter 3 of the *Report of the Auditor General of Canada to the House of Commons* dated December 2002, entitled “*Special Import Measures Act: Protecting Against Dumped or Subsidized Imports*”, assessed, further to an audit, whether the Tribunal and the Canada Customs and Revenue Agency had put in place the support and management processes required to implement the changes recommended by the two parliamentary subcommittees that conducted a significant review of the *Special Import Measures Act* in 1996. With regard to the Tribunal, the Auditor General of Canada determined that the Tribunal had, for the great majority, implemented the mechanisms that were required.

The Departmental Performance Report therefore demonstrates the Tribunal's commitment to support a fair and open trade system.

Pierre Gosselin
Pierre Gosselin

Part II — Context and Performance

Context

Organization

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 Tribunal may be composed of up to nine full-time members, including a Chairperson and two Vice-Chairpersons, 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 Chairperson is the Chief Executive Officer responsible for the assignment of members and for the management of the Tribunal's work.

Members of the Tribunal are supported by a permanent staff of 87 people. Its principal officers are the Secretary, responsible for corporate management, public relations, dealings with other government departments and other governments, and the court registry functions of the Tribunal; the Executive Director, Research, responsible for the investigative portion of inquiries, the economic and financial analysis of firms and industries, the investigation of complaints by potential suppliers concerning any aspect of the procurement process and other fact finding required for Tribunal inquiries; and the General Counsel, responsible for the provision of legal services to members and staff of the Tribunal.

Mandate

The Tribunal derives its authority from the *Canadian International Trade Tribunal Act (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, or are threatening to cause, material injury to a domestic industry;
- hear appeals of decisions of the Canada Customs and Revenue Agency (CCRA) made under the *Customs Act*, the *Excise Tax Act* and the *Special Import Measures Act (SIMA)*;
- conduct inquiries into complaints by potential suppliers concerning federal government procurement that is covered by the *North American Free Trade Agreement (NAFTA)*, the *Agreement on Internal Trade (AIT)*, the *Agreement on Government Procurement (AGP)* and the *Canada-Korea Agreement on the Procurement of Telecommunications Equipmen (CKTEA)*;
- conduct investigations into requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations;

- 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.

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 CCRA 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'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 U.S. and/or Mexican interests. Governments that are members of the World Trade Organization (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*.

The objective 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 references, can formulate strategies aimed at making Canadian producers more competitive in the global trade environment. In doing so, the Tribunal plays a key role in the government's economic agenda.

Operating Environment

As a quasi-judicial organization that carries out its statutory responsibilities in an autonomous and impartial manner, the Tribunal cannot participate in horizontal initiatives as they relate to various areas of its mandate. Furthermore, the Tribunal is not involved in any activities other than those assigned to it by statute. It does not generally control its workload, as the primary sources of demand for its services are externally generated.

The economic climate is a key external factor affecting the Tribunal's work. 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*.

NAFTA, the *AGP* and the *CKTEA* require signatory governments to maintain an independent bid challenge (complaint) authority. The *CITT Act* establishes the Tribunal as the complaint authority for Canada. The Tribunal is also the bid challenge authority under the *AIT*. 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. 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 CCRA decisions made under the *Customs Act*, the *Excise Tax Act* and *SIMA*.

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.

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. During fiscal year 2002-2003, the Tribunal, as directed by the Governor in Council, conducted a safeguard inquiry into the importation of certain steel goods. That inquiry was the most extensive one to date to be carried out by the Tribunal.

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.

Modern Management

Modern Comptrollership

During fiscal year 2002-2003, the Tribunal launched its modern comptrollership initiative. The capacity assessment of the Tribunal's modern management practices was completed. The action plan for the implementation of corrective measures will be developed in the next fiscal year.

Regarding the integration of corporate systems, the Tribunal is participating in a project whose objective is to integrate the Tribunal's financial system (GX) and the automated materiel management information system (AMMIS) and, in doing so, will provide better management of its assets and eliminate unnecessary duplication.

Service Improvement Initiative

This initiative is closely linked to one of the Tribunal's strategic priorities, that is, maintaining the Tribunal's accessibility as a quasi-judicial organization. This is a high priority because parties can represent themselves before the Tribunal. There is therefore a need for Tribunal guides, information kits, guidelines and practice notices that will allow stakeholders to gain a better understanding of the Tribunal's jurisdiction, and of the procedures that they must follow to avail themselves of the Tribunal's services, in each area of its mandate.

During fiscal year 2002-2003, the Tribunal developed a new guideline and two guides in order to make domestic producers aware of the Tribunal's new mandate regarding safeguard inquiries relating to increased imports from the People's Republic of China (China) and of how to avail themselves of these new legislative measures. This new mandate was assigned to the Tribunal to reflect one of the concessions by China as part of its accession to the WTO. The new guideline was distributed to various groups of stakeholders, including national and provincial associations, and was posted to the Tribunal's Web site in order to provide as wide a distribution as possible.

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

Government On-Line Initiative

The Tribunal continues to dedicate significant efforts to improve the delivery of services to stakeholders by means of information technology. Its Web site is used as a means of communication with various groups of stakeholders and the public. In addition to being an exhaustive repository of all documents produced by the Tribunal, the Web site also allows its users to register free of charge for a subscriber alert service which informs them when new documents are posted on the Tribunal's Web site. The Web site also allows potential suppliers to file a procurement complaint on-line or interested parties in some of the other proceedings to complete on-line Tribunal questionnaires.

During the safeguard inquiry into the importation of certain steel goods, the Tribunal used its Web site as a means of communication and of distribution of documents. Considering the established deadlines, the Tribunal needed to identify ways by which it could communicate quickly with close to 200 parties and hundreds of interested parties worldwide and make available to them, in a timely fashion, various documents relevant to the inquiry. This method of communicating and distributing documents enhanced significantly the quality of service to those participating or interested in the safeguard inquiry.

As it has already been reported in previous performance reports, the Tribunal is pursuing the development of an information technology application that will allow for the automation of the official record in its proceedings. In the near future, the Tribunal intends to make the application available to parties participating in a proceeding. The Tribunal is of the view that this initiative will contribute to improving the level of service and provide for a more efficient participation of parties in a proceeding. The introduction of information technology in the hearing room should also lead to better management of the hearing process.

Report of the Auditor General of Canada

Chapter 3 of the *Report of the Auditor General of Canada to the House of Commons*, dated December 2002, is entitled “*Special Import Measures Act: Protecting Against Dumped or Subsidized Imports*”. The audit examined the changes to *SIMA* recommended by the two parliamentary subcommittees that conducted a significant review of the act. The audit assessed whether the Tribunal and the CCRA had put in place the support and management processes required to implement the recommended changes.

As far as the Tribunal is concerned, the Auditor General of Canada determined that the great majority of the required mechanisms had been put in place. The Tribunal will ensure that all required mechanisms are in place by the end of the next fiscal year.

Strategic Outcome

In light of the key results identified below, the Tribunal is in a position to continue to be a key player within 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. ➤ Tribunal's decisions viewed as fair and impartial by domestic and international stakeholders.

Performance

The Tribunal is a key player within Canada's trade remedies system. As a signatory to various trade agreements, Canada has rights and obligations. The Tribunal's role is to ensure that Canada's obligations are honoured. The Tribunal's challenge is to support a fair and open trade system. Its performance must therefore be assessed against the timeliness and soundness of its decisions and the extent to which they are upheld when they are the subject of applications for judicial review before the Federal Court of Canada or a binational panel under *NAFTA*. The same rationale applies to the implementation of the Tribunal's recommendations by the government. 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 judicially reviewed by or appealed to the Federal Court of Canada, reviewed by a *NAFTA* binational panel or challenged before a WTO dispute settlement body.

Of the 17 cases investigated by the Tribunal pursuant to *SIMA* during fiscal year 2002-2003, no decisions were appealed to the Federal Court of Canada or a binational panel. As for the Tribunal's 4 decisions, issued in the previous two fiscal years, that were appealed to the Federal Court of Canada, 2 applications were dismissed and the other 2 were discontinued. One decision from fiscal year 1999-2000 was the subject of a review by a *NAFTA* binational panel. The Tribunal's decision was affirmed. No Tribunal decisions were challenged before a WTO dispute settlement body.

In the context of the safeguard inquiry into the importation of certain steel goods, the Tribunal's determinations of serious injury were appealed to the Federal Court of Canada. This matter was still under consideration at the end of the fiscal year.

As for Tribunal decisions regarding appeals from CCRA decisions under the *Customs Act*, the *Excise Tax Act* and *SIMA*, the Federal Court of Canada dealt with 5 appeals of Tribunal decisions. The results were as follows: 2 appeals were discontinued, and 3 appeals were dismissed.

Of the 31 cases determined on merit pursuant to the Tribunal's bid challenge authority for federal government procurement under *NAFTA* and the *AIT*, 6 determinations were appealed to the Federal Court of Canada. The Federal Court of Canada remanded 1 decision to the Tribunal and 5 were in progress at year end. As for applications regarding the Tribunal's determinations issued in fiscal years 2000-2001 and 2001-2002, 1 application was dismissed and 2 were remanded to the Tribunal.

- Implementation of the Tribunal's Recommendations by the Government

As the bid challenge authority for federal government procurement, the Tribunal makes determinations that may consist of a recommendation to the government institution (such as retendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing complainant.

In fiscal year 2002-2003, the Tribunal made 31 determinations, 12 of which included recommendations. Of these recommendations, 9 were implemented by the government institution, 3 are held in abeyance pending the outcome of applications for judicial review.

In the safeguard inquiry into the importation of certain steel goods, the Governor in Council directed the Tribunal to report and submit its recommendations to the government. These were still under consideration at the end of the fiscal year.

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. No recommendation was made to the Minister of Finance in fiscal year 2002-2003. Of the 3 recommendations made to the Minister of Finance during the last fiscal year, 2 recommendations were implemented, and the remaining one was still under consideration at the end of this fiscal year.

- 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 2002-2003, 45 decisions were issued covering these two areas of the Tribunal's mandate. All decisions were issued within the statutory deadlines.

As for appeals of CCRA decisions, the Tribunal issued 25 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 Viewed as Fair and Impartial by Domestic and International Stakeholders

The Tribunal has established the Bench and Bar Committee to promote discussion on issues of importance with the Canadian Bar Association and trade consultants. Meetings are held on a semi-annual 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.

Part III — Annexes

Annex I — Financial Performance

Financial Performance Overview

The Tribunal started the year with authorities of \$9 million. Supplementary estimates in the amount of \$378,000 were then approved to allow the carryforward of the previous years' lapses. Treasury Board approved a sum of \$455,000 for the negotiated salary increases, an amount of \$45,000 for the modern comptrollership Initiative and an amount of \$418,000 to offset additional and unfunded expenditures relating to the safeguard inquiry into the importation of certain steel goods. Finally, an additional sum of \$80,000 was paid for the Employee Benefit Plan, thereby increasing the authorities to \$10.4 million. In 2002-2003, the Tribunal spent \$10.1 million of its total authorities of \$10.4 million. The surplus of approximately \$297,000 represents 3 percent of the resources allocated to the Tribunal in the Main Estimates. The one-time Operating Budget rule allows departments and organizations to carry forward 5 percent of the allocated resources from the Main Budget. Inasmuch as the Tribunal may receive instructions from the Governor in Council or the Minister of Finance to initiate enquiries on economic, commercial or tariff issues, whenever possible, it tries to maintain a reserve in order to respond to such unexpected requests. The difference between planned spending and actual spending is due to additional expenditures incurred in relation to the safeguard inquiry into the importation of certain steel goods. The cost of such government references is not factored in the Tribunal's reference levels due to their unpredictability.

Financial Summary Tables

Financial Table 1

Financial Requirements by Authority (thousands of dollars)

Vote	2002-2003			
	Planned Spending	Total Authorities	Actual	
Canadian International Trade Tribunal				
25	Operating Expenditures	7,780	9,076	8,779
(S)	Contributions to Employee Benefit Plan	1,267	1,347	1,347
Total		9,047	10,423	10,126

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

Financial Table 2**Departmental Planned versus Actual Spending
(thousands of dollars)**

Business Line	2002-2003		
	Planned	Total Authorities	Actual
Canadian International Trade Tribunal			
FTEs	94	94	90
Operating	9,047	10,423	10,126
Total Net Expenditures	9,047	10,423	10,126
Other Revenues and Expenditures			
Non-respendable Revenues	-	-	(2)
Cost of Services Provided by Other Departments	1,396	2,154	2,149
Net Cost of the Program	10,443	12,577	12,273

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	2002-2003				
	Actual 2000-2001	Actual 2001-2002	Planned Spending	Total Authorities	Actual
Canadian International Trade Tribunal	8,771	9,309	9,047	10,423	10,126
Total	8,771	9,309	9,047	10,423	10,126

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

Annex II — 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: (613) 993-3595
Fax: (613) 998-1322
E-mail: secretary@citt-tcce.gc.ca
Tribunal's Web Site: www.citt-tcce.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

List of Statutory and Tribunal Reports

Annual Report

- 1989-90 to 2002-2003

Bulletin

- 1995-96 to 2002-2003

Guides

- Introductory Guide to the Canadian International Trade Tribunal
- Procurement Review Process—A Descriptive Guide
- Safeguard Inquiry—Market Disruption—Imports from China—Guide for Complainant
- Safeguard Inquiry—Trade Diversion—Imports from China—Guide for Complainant
- 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

Textile Reference—Annual Status Report*

- 1994-95 to 2000-2001

* Incorporated into the Tribunal's Annual Report as of fiscal year 2002-2003.