

BENCH AND BAR COMMITTEE MINUTES

November 18, 1999

IN ATTENDANCE

CITT

Pierre Gosselin
Ron Erdmann
Michel Granger
Gerry Stobo
Gilles Legault

COUNSEL

Tom Akin
Ron Cheng
Riyaz Dattu
Gordon Lafortune
Greg Tereposky

MINUTES FROM PREVIOUS MEETING

The minutes from the June 22, 1999 meeting were approved.

SIMA UPDATE

Members of the CBA met with Tribunal staff the morning of November 18, 1999 to discuss the proposed Tribunal changes to the Tribunal rules of practise.

Gerry Stobo mentioned that officials at the Department of Finance had proposed an enactment date of March 1, 2000 for changes to SIMA in BILL C-35, although there was some flexibility on that date.

Gerry mentioned that the Tribunal was working on four policies/practise notices in order to coincide with implementation of the Bill C-35 changes. They were dealing with: preliminary determination of injury, interim reviews, public interest and expiry reviews. He also mentioned that these would be circulated for comments before being finalised.

There was some discussion about the date on which a finding or order would expire if, following consideration of the likelihood of resumed dumping question in an expiry review, CCRA concluded that no likelihood existed. Greg Tereposky suggested that the date of termination should be on the order or finding's fifth year anniversary date and not the date on which CCRA communicates its decision about the likelihood of resumed dumping to the Tribunal. The Tribunal had not come to any specific conclusions on this question and suggested in part, the answer to that question, would follow from the wording used by CCRA when rendering its decision.

There was a discussion about the nature of CCRA's decision in expiry reviews and the extent to which they would provide reasons for their conclusion. At the time of the meeting CCRA had not communicated to the Tribunal what its intentions were in this regard.

Gerry also mentioned that CCRA had proposed meeting with members of the Tribunal to brief it on their plans for simplification of processing for SIMA (and other) cases.

COMMENCEMENT OF SIMA CASES BEFORE THE FINAL DETERMINATION IS RECEIVED FROM CCRA

Ron Erdmann indicated that the Tribunal had decided to commence some hearings several days before the final determination (FD) was received from CCRA in order to give it the time needed to hear and decide the case. He mentioned that some cases, usually the larger ones were taking so much time to hear that Tribunal members and staff were being squeezed in their post-hearing activities. In order to try and give several extra days to the Tribunal in the highly time-sensitive period the Tribunal has decided to start some cases before the FD.

The discussion that followed focussed on the frequency that FD's were different from preliminary determinations in respect of issues such as volume of imports and margins of dumping. It was suggested that the brief review be undertaken to compare changes between the issuance of the preliminary determination and the final determination in such things as i) margins of dumping; ii) volume of dumped goods; and iii) countries included in the determination. The Tribunal agreed to obtain and share this information. There was concern expressed that parties who considered entering into undertakings would be adversely affected by the Tribunal's decision to start the hearing earlier.

PROCUREMENT

Pierre Gosselin mentioned that the Tribunal was interested in having someone join the Bench and Bar Committee who had extensive experience in procurement matters before the Tribunal. Tom Akin, on behalf of the CBA, indicated they would take that under advisement when selecting their representative for the year 2000/2001 commencing September 2000.

Pierre also mentioned that the Tribunal wanted to ensure its processes were user-friendly. By that he explained, the bid protest mechanism seemed to be a mystery to many potential suppliers and he was concerned that the complexity or mystery of the process was dissuading persons who may have a legitimate reason to complain. He went on to state that the Tribunal would be looking at its processes and the way they are communicated to the public to ensure they are accessible to those who may need to use the system.

The Tribunal said it would provide some information on the number of procurement cases it was receiving in 1999 as compared to previous years. This followed Mr. Gosselin's comments that the number of procurement cases seemed to be increasing in 1999.

Gerry mentioned that draft guidelines regarding compensation for lost profit in procurement cases had been circulated for comment. Comments were expected to be in by the end of the year or early into the New Year.

CONFIDENTIALITY GUIDELINES

Ron Erdmann distributed the Guidelines and explained some of the changes between this final version and earlier drafts. In particular, Ron mentioned the Tribunal's decision to require that parties indicate their top injury allegations in the responses to questionnaires. If parties chose not to refer to them in their responses the Tribunal would be unlikely to allow them to raise these issues later, at for example, the time parties cases are submitted. The Tribunal also decided to require that more information regarding these allegations be made public, even if disclosure was limited only to parties against whom the allegations are made. Members of the bar expressed some concern about their client's ability to provide this information so early in the inquiry process. Often this information is only revealed or fleshed out by the clients later in the investigative schedule, often after the staff report was issued on day fifty. Ron reiterated that the Tribunal was attempting to enhance the fairness of its investigations by putting this information on the table well in advance of the hearing so that parties had adequate time to consider the allegations and prepare their response to the.

CLOSE OF MEETING

There being no other business, the meeting ended at 1:30 P.M.