

Canadian International Trade Tribunal

Departmental Performance Report

**For the
period ending
March 31, 2002**

Canadian International Trade Tribunal

Departmental Performance Report

**For the
period ending
March 31, 2002**

**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	6
Performance	6
Part III — Annexes	9
Annex I — Financial Performance	9
Financial Performance Overview	9
Financial Summary Tables	9
Annex II — Other Information.....	11
Contact for Further Information and Web Site.....	11
Legislation Governing the Work of the Canadian International Trade Tribunal	11
List of Statutory and Tribunal Reports	11

Part I — Chairperson’s Message

I am pleased to present the Departmental Performance Report of the Canadian International Trade Tribunal for fiscal year 2001-2002.

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 (WTO) agreements, the *Canada-Israel Free Trade Agreement*, the *Canada-Chile Free Trade Agreement*, the *Agreement on Procurement of Telecommunications Equipment*, and the *Agreement on Internal Trade*.

From year to year, the Tribunal’s main challenge, as a quasi-judicial organization, is to effectively coordinate an externally generated workload made up of dumping and/or subsidizing inquiries, appeals of decisions of the Canada Customs and Revenue Agency, procurement complaints, and tariff relief requests, and to meet all statutory deadlines.

Over the years, I have reported on the Tribunal’s efforts to enhance its efficiency and effectiveness through the more extensive use of information technology. In fiscal year 2001-2002, the Tribunal adopted, on an operational basis, an information technology application that allows for the automation of the administrative (official) record in Tribunal proceedings. I am convinced of the benefits of this application for Tribunal members and staff in coping with an increasing workload. It is the Tribunal’s objective to make the application available to counsel appearing before the Tribunal in the near future and I am convinced of the benefits they will obtain as well.

In an effort to facilitate stakeholders’ interaction with the Tribunal, the Tribunal has made available on its Web site an electronic package entitled “Filing a Procurement Complaint”. This package provides potential complainants with an overview of the Tribunal’s jurisdiction and process, and allows them to complete their complaint form on line. The Tribunal will pursue its efforts to identify and implement such applications.

The Departmental Performance Report for 2001-2002 demonstrates it’s the Tribunal’s commitment to supporting a fair and open trade system and to being accessible to stakeholders through the more extensive use of information technology.

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 86 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.

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 *Agreement on Procurement of Telecommunications Equipment*;
- 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.

Operating Environment

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 SIMA.

NAFTA, the AGP and the *Agreement on the Procurement of Telecommunications Equipment* 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.

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

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 emphasis is on accessibility to the Tribunal's services and resources, as well as timely responses to stakeholders.

"Government On-Line" Initiative

The Tribunal continues to make significant efforts to enhance service delivery to its stakeholders through the use of information technology. In fiscal year 2001-2002, the Tribunal made available on its Web site an electronic package entitled "Filing a Procurement Complaint". In addition to providing access to relevant legislative and regulatory documents and various agreements governing the jurisdiction of the Tribunal as the bid challenge (complaint) authority for federal government procurement, the package provides potential complainants with an overview of the Tribunal's process and allows them to complete their complaint form on line.

The Tribunal has implemented an information technology application that allows for the automation of the administrative (official) record in its proceedings. This application is of

great assistance to Tribunal members and staff as a research aid. Staff use the application for the preparation of various documents related to an inquiry. It is also of assistance to Tribunal members during their deliberative process. In the near future, it is the intention of the Tribunal to make the application available to counsel and parties participating in Tribunal proceedings. Finally, the Tribunal plans to use the application during hearings and believes that it will be of great assistance in managing the hearing process.

Strategic Outcome

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. ➤ Tribunal's decisions viewed as fair and impartial by domestic and international stakeholders.

Performance

The Tribunal's challenge is to support a fair and open trade system. 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 WTO dispute settlement panel.

Of the 14 cases investigated by the Tribunal pursuant to SIMA during fiscal year 2001-2002, 3 decisions were appealed to the Federal Court of Canada. One appeal was withdrawn and 2 were in progress at year end. As for the Tribunal's 2 decisions issued in the previous fiscal year that were appealed to the Federal Court of Canada, they were still in progress at year end. Two decisions from fiscal years 1999-2000 and 2000-2001 were the subject of a review by a binational panel under NAFTA. The Tribunal's decision in one case was affirmed and the other was still suspended at year end. No Tribunal decisions were appealed to a WTO dispute settlement panel.

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 10 appeals of Tribunal decisions. The results of these appeals were as follows: 4 were discontinued, 5 were dismissed and 1 was allowed.

Of the 32 cases determined on merit pursuant to the Tribunal's bid challenge authority for federal government procurement under NAFTA, the AIT and the AGP, 7 determinations were appealed to the Federal Court of Canada. The Federal Court dismissed 2 applications and 5 were in progress at year end. As for applications regarding the Tribunal determinations issued in fiscal years 1999-2000 and 2000-2001, 3 applications 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 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 2001-2002, the Tribunal made 32 determinations, 11 of which included recommendations. Of these recommendations, 7 were implemented by the government institution, 2 were not implemented and 2 are held in abeyance pending the outcome of applications for judicial review.

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 were issued to the Minister of Finance in 2001-2002. Three recommendations were implemented by the Minister of Finance, and the remaining three were 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 2001-2002, 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 59 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 \$8.7 million. Supplementary estimates in the amount of \$371,900 were then approved to allow the carryforward of the previous years' lapses. Treasury Board approved a sum of \$454,000 for the negotiated salary increases. Finally, an additional sum of \$50,000 was paid for the Employee Benefit Plan, thereby increasing the authorities to \$9.6 million. In 2001-2002, the Tribunal spent \$9.3 million of its total authorities of \$9.6 million. The surplus of approximately \$313,000 represents 4 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 General 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.

Financial Summary Tables

Financial Table 1

Financial Requirements by Authority (thousands of dollars)

Vote	2001-2002		
	Planned Spending	Total Authorities	Actual
Canadian International Trade Tribunal			
25	Operating Expenditures	7,554	8,380
(S)	Contributions to Employee Benefit Plan	1,192	1,242
Total		8,746	9,622

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

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

Business Line	2001-2002		
	Planned	Total Authorities	Actual
Canadian International Trade Tribunal			
FTEs	94	94	91
Operating	8,746	9,622	9,309
Total Net Expenditures	8,746	9,622	9,309
Other Revenues and Expenditures			
Non-respendable Revenues	-	-	-
Cost of Services Provided by Other Departments	2,083	2,083	2,121
Net Cost of the Program	10,829	11,705	11,430

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	2001-2002				
	Actual 1999-2000	Actual 2000-2001	Planned Spending	Total Authorities	Actual
Canadian International Trade Tribunal	8,486	8,771	8,746	9,622	9,309
Total	8,486	8,771	8,746	9,622	9,309

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 2001-2002

Bulletin

- 1995-2001

Guides

- Introductory Guide to 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

Textile Reference: Annual Status Report

- 1994-95 to 2000-2001