

Canadian International Trade Tribunal

Departmental Performance Report

**For the
period ending
March 31, 2004**

Canadian International Trade Tribunal

Departmental Performance Report

**For the
period ending
March 31, 2004**

**Ralph Goodale
Minister of Finance**

Table of Contents

Part I — Chairperson’s Message	1
Part II — Management Representation Statement	3
Part III — Summary of Departmental Performance	5
Part IV — Context	7
Organization.....	7
Mandate.....	7
Business Line Description	8
Operating Environment.....	8
Part V — Performance	11
Strategic Outcome.....	11
Soundness and Timeliness of the Tribunal’s Decisions	11
Upholding of the Tribunal’s Decisions by National and International Appeal Bodies	11
Implementation of the Tribunal’s Recommendations by the Government.....	12
Publication of the Tribunal’s Decisions in a Timely Way	12
Tribunal’s Decisions Viewed as Fair and Impartial by Domestic and International Stakeholders.....	13
Government-wide Priorities.....	13
Modern Comptrollership	13
Service Improvement and Government On-Line Initiatives	13
Report of the Auditor General of Canada.....	14
Part VI — Annexes	17
Annex I — Financial Performance	17
Financial Performance Overview	17
Financial Summary Tables	17
Annex II — Other Information.....	19
Contact for Further Information and Web Site.....	19
Legislation Governing the Work of the Canadian International Trade Tribunal	19
List of Statutory and Tribunal Reports	19

Part I — Chairperson’s Message

I am pleased to present the Departmental Performance Report of the Canadian International Trade Tribunal for fiscal year 2003-2004.

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*. In performing its functions, the Tribunal acts as an independent, quasi-judicial, decision-making body that is accountable to Parliament through the Minister of Finance.

The Tribunal’s main challenges are to provide easy access to its services for the public that it serves and to effectively adjudicate, within tight statutory deadlines, the cases that are referred to it. The caseload is made up of dumping and/or subsidizing complaints, appeals of decisions of the Canada Border Services Agency and the Canada Revenue Agency, complaints about federal government procurement activities, requests for tariff relief, and references from the government directing the Tribunal to inquire into and/or provide advice on economic, trade and tariff issues.

Pierre Gosselin

Part II — Management Representation Statement

I submit, for tabling in Parliament, the 2003–2004 Departmental Performance Report for the Canadian International Trade Tribunal.

This report has been prepared based on the reporting principles and other requirements set out in the *2003–2004 Departmental Performance Reports Preparation Guide* and represents, to the best of my knowledge, a comprehensive, balanced and transparent picture of the organization’s performance for fiscal year 2003–2004.

Julia Ginley
Director
Management Services

October 1, 2004

Part III — Summary of Departmental Performance

Summary of the Tribunal's Performance (See Part V for details)		
Strategic Outcome	Results	Performance
Support of a fair and open trading system	➤ Maintain the quality of the Tribunal's findings, determinations and recommendations.	➤ Met
	➤ Hear cases and make decisions expeditiously on matters that fall within the Tribunal's statutory jurisdiction.	➤ Met
	➤ Maintain the Tribunal's independence and accessibility as a quasi-judicial decision-making body.	➤ Met
	➤ Publish the Tribunal's decisions in a timely way.	➤ Met
	➤ Ensure that the Tribunal's decisions are fair and impartial by domestic and international standards.	➤ Met
Government-wide Priorities		
	Modern Comptrollership	➤ Not yet fully met
	Service Improvement and Government On-Line	➤ Not yet fully met

Part IV — Context

Organization

The Tribunal is an independent investigative and quasi-judicial decision-making body that reports to Parliament through the Minister of Finance.

Under the *Canadian International Trade Tribunal Act (CITT Act)*, 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. The Chairperson is the Chief Executive Officer responsible for the assignment of cases to the Members and for the management of the Tribunal's workload and resources.

The Members of the Tribunal are supported by a permanent staff of 78 people. Its principal officers are the Secretary, responsible for relations with the public, the court registry functions of the Tribunal and relations with other government departments and other governments; the Director General, 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 the Members and staff of the Tribunal.

Mandate

The Tribunal derives its authority from the *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 Border Services Agency (CBSA) made under the *Customs Act* and the *Special Import Measures Act (SIMA)* and decisions of the Canada Revenue Agency (CRA) under the *Excise Tax Act*;
- 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 Equipment (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 into 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 a specialized “court” that inquires into the alleged economic injury sustained by Canadian industries from the dumping and subsidizing of imports, that hears appeals from CBSA or CRA decisions on customs and excise matters respectively and that inquires into complaints concerning federal government procurement activities. It also serves, upon request, as an advisor to the Governor in Council or the Minister of Finance on a broad range of trade, economic or tariff-related matters.

The Tribunal’s decisions on dumping and subsidizing matters may be reviewed by the Federal Court of Appeal (or a binational panel under *NAFTA*, in the case of a decision affecting U.S. and/or Mexican interests). Governments that are member states of the World Trade Organization (WTO) may submit the Tribunal’s decisions to a dispute settlement panel under the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes*.

The Tribunal’s decisions on all remaining matters (with the exception of appeals) may also be reviewed by the Federal Court of Appeal. The Tribunal’s decisions on appeals under the *Customs Act* may be further appealed to the Federal Court of Appeal and, under the *Excise Tax Act*, to the Federal Court.

The objective of the Tribunal’s business line is to ensure that Canadians can rely on an accessible, fair and efficient adjudication of complaints and that the government, through the Tribunal’s fact-finding inquiries and standing references, can obtain reliable economic and trade analysis to 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. The “Summary of Departmental Performance” provides a summary of the Tribunal’s performance against expected results.

Operating Environment

As a quasi-judicial organization that carries out its statutory responsibilities in an independent and impartial manner, the Tribunal cannot participate in horizontal policy initiatives as they relate to substantive areas within the scope of its legislated 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 often 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. 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.

More recently, the *CITT Act* was amended to authorize the Tribunal to conduct special safeguard inquiries into whether increased imports from the People's Republic of China (China) are causing market disruption to the Canadian industry and whether safeguard measures applied against imports from China in other WTO markets are causing trade diversion to Canada.

The Tribunal also hears appeals of CBSA decisions made under the *Customs Act* and *SIMA* and of CRA decisions made under the *Excise Tax Act*.

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 2003-2004, there were no such references.

Part V — Performance

Strategic Outcome

The Tribunal contributes to a fair and open trading system for Canadians and for the Canadian industry. The Tribunal's performance must be assessed against:

- the soundness and timeliness of its decisions;
- the extent to which they are upheld when they are the subject of applications for judicial review before the Federal Court of Appeal or a binational panel under *NAFTA*; and
- the degree of implementation of the Tribunal's recommendations by the government.

Soundness and Timeliness of the Tribunal's Decisions

All Tribunal decisions were delivered within the legislated time frames. The soundness of those decisions can be demonstrated by the number of decisions that were appealed and upheld, as well as the implementation rate of decisions issued. These latter performance indicators are illustrated below.

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 Appeal, reviewed by a *NAFTA* binational panel or submitted by a WTO member state to a WTO dispute settlement panel.

Of the 18 cases investigated by the Tribunal pursuant to *SIMA* during fiscal year 2003-2004, no decisions were challenged at the Federal Court of Appeal or before a *NAFTA* binational panel. As for the sole Tribunal decision, issued in the previous fiscal year, that was appealed to the Federal Court of Appeal, the application was dismissed. No Tribunal decisions were challenged before a *NAFTA* binational panel. No Tribunal decisions were submitted to a WTO dispute settlement panel by a WTO member state.

As for the appeal to the Federal Court of Appeal of the 2002 Tribunal determination of serious injury in the context of the safeguard inquiry into the dumping of certain steel goods, the application was discontinued.

As for the 38 decisions, which the Tribunal made during fiscal year 2003-2004 regarding 89¹ appeals under the *Customs Act*, the *Excise Tax Act* and *SIMA*, 14 were appealed to the Federal Court of Appeal, with the following results: 2 appeals were discontinued, and 3 were dismissed. The others were outstanding at the end of the fiscal year.

1. Certain decisions covered more than one appeal case.

Of the 31 cases determined on merit pursuant to the Tribunal's bid challenge authority for federal government procurement under *NAFTA* and the *AIT*, 14 determinations were challenged at the Federal Court of Appeal. The Federal Court of Appeal allowed judicial review in 3 cases, 2 were discontinued, and 1 was withdrawn. Eight such challenges were in progress at the end of the fiscal year. As for applications for judicial review regarding Tribunal determinations from previous fiscal years, 4 applications were dismissed, 3 were discontinued, and 1 was allowed with the matter being remanded back to the Tribunal for reconsideration.

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 re-tendering, re-evaluating or providing compensation) and the award of reasonable costs to a prevailing party.

In fiscal year 2003-2004, the Tribunal made 31 determinations, 13 of which included recommendations. Of these recommendations, 10 were implemented by the government institution, and 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 government decided against implementing the Tribunal's recommendations.

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. Eight recommendations were made to the Minister of Finance in fiscal year 2003-2004. Of those recommendations, 3 were implemented, and the remaining ones were still under consideration at the end of the 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 2003-2004, 49 decisions were issued covering these two areas of the Tribunal's mandate. All decisions were issued within the statutory deadlines.

As for appeals of CBSA and CRA decisions, the Tribunal issued 38 decisions during the fiscal year. There is no statutory deadline imposed for the publication of such decisions. However, the Tribunal adopted an informal, voluntary standard of publishing such decisions within 120 days of the hearing of an appeal. Due to the press of statutorily imposed deadlines in its other mandates, the Tribunal was not able to consistently meet its voluntary standard for appeals during the fiscal year.

Tribunal's Decisions Viewed as Fair and Impartial by Domestic and International Stakeholders

Some years ago, at the request of the Commodity Tax Committee of the Canadian Bar Association (CBA), the Tribunal established a Bench and Bar Committee (the Committee). The Committee is composed of lawyers nominated by the CBA and of Department of Justice lawyers and trade consultants invited by the Tribunal. Meetings of the Committee provide an opportunity for participants to present their views and concerns about the Tribunal's processes and procedures and allow the Tribunal to seek the views of the participants and their clients on proposed changes to its processes and procedures. The Committee held one meeting during the fiscal year.

The Tribunal also communicates with its stakeholders to seek their views when considering the introduction of new procedures. It issues practice notices and guidelines to convey its new procedures to the community at large. During the fiscal year, the Tribunal issued a new cost guideline in draft form, solicited and received comments from interested parties, and discussed the matter at the Committee.

These consultative mechanisms allow the Tribunal to remain accessible to various groups of stakeholders and to take advantage of their points of view.

Government-wide Priorities

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. In 2003-2004, the action plan for the implementation of corrective measures was developed and implementation of the plan started, i.e. Audit Policy and Plan. The Tribunal also decided on a re-organization that would put more focus on the management functions of the Tribunal by bringing in an executive to head all corporate functions. The new organization will be fully implemented in fiscal year 2004-2005.

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, to provide better management of its assets and eliminate unnecessary duplication. An interface was developed to facilitate the transfer of information between the two applications. This interface improved the efficiency of the systems and reduced the requirement for duplicate entries.

Service Improvement and Government On-Line Initiatives

These initiatives are closely linked to one of the Tribunal's strategic priorities of being a tribunal of easy access. 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 to 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.

In fiscal year 2003-2004, the Tribunal held its first hearing using the electronic file. During the hearing, electronic images of exhibits were used instead of their paper version. This initiative allowed the Tribunal to proceed more rapidly and efficiently throughout the hearing. The participants agreed that this was a significant improvement. The introduction of information technology into the hearing room has led to better management of the hearing process. 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.

During fiscal year 2003-2004, the Tribunal issued an important guideline, which simplified procedures for settling the parties' costs in inquiries into government procurement activities.

In addition, the Tribunal offers services to the public in both official languages, at all times. Such services include the provision of information 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.

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. There is also an exhaustive repository of all documents produced by the Tribunal that allows for research into past decisions. 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 there. The Web site also allows potential suppliers to file a procurement complaint on-line or interested parties in some of the other proceedings to download and complete electronic versions of Tribunal questionnaires.

The Tribunal uses its Web site as a means of communication and of distribution for documents. This significantly enhances the quality of service to those participating or interested in the Tribunal cases.

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 Canada Customs and Revenue Agency had put in place the support and management processes required to implement the recommended changes.

The Auditor General of Canada determined that the great majority of the required mechanisms had been put in place. The Tribunal committed to ensuring that all required mechanisms were in place by the end of fiscal year 2003-2004. The Tribunal fulfilled this commitment and followed up with a response to the Auditor General of Canada on April 29, 2004.

Part VI — Annexes

Annex I — Financial Performance

Financial Performance Overview

The Tribunal started the year with authorities of \$9.5 million. Supplementary estimates in the amount of \$380,000 were then approved to allow the carry forward of the previous years' lapses. Treasury Board approved a sum of \$163,000 for the negotiated salary increases. Finally, the Employee Benefit Plan was reduced by a sum of \$230,000. These adjustments resulted in increased authorities of \$9.8 million. In 2003-2004, the Tribunal spent \$9.3 million of its total authorities. The surplus of approximately \$523,000 represents 5 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 its workload is quite difficult to predict, the Tribunal tries, whenever possible, to maintain a reserve to meet unexpected requests. The difference between planned spending and actual spending is due to delays in the resourcing of positions.

Financial Summary Tables

Financial Table 1

Financial Requirements by Authority (thousands of dollars)

Vote		2003-2004			
		Total Main Estimates	Total Planned Spending	Total Authorities	Total Actual Spending
Canadian International Trade Tribunal					
25	Operating Expenditures	8,185	8,185	8,728	8,205
(S)	Contributions to Employee Benefit Plan	1,349	1,349	1,119	1,119
(S)	Spending of Proceeds From the Disposal of Surplus Crown Assets	-	-	2	-
Total		9,534	9,534	9,849	9,324

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

Business Line	2003-2004			
	Total Main Estimates	Total Planned Spending	Total Authorities	Total Actual Spending
Canadian International Trade Tribunal				
FTEs	94	94	94	87
Operating	9,534	9,534	9,849	9,324
Total Net Expenditures	9,534	9,534	9,849	9,324
Other Revenues and Expenditures				
Cost of Services Provided by Other Departments	-	2,174	2,321	2,293
Net Cost of the Program	9,534	11,708	12,170	11,617

Financial Table 3**Historical Comparison of Planned Spending Versus Actual Spending
(thousands of dollars)**

Business Line	2003-2004					
	Actual 2001-2002	Actual 2002-2003	Total Main Estimates	Total Planned Spending	Total Authorities	Total Actual Spending
Canadian International Trade Tribunal	9,309	10,126	9,534	9,534	9,849	9,324
Total	9,309	10,126	9,534	9,534	9,849	9,324

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 2003-2004

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.