

Introductory

GUIDE

to the Canadian
International
Trade Tribunal

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTERIEUR



RAISON D'ÊTRE

The Canadian International Trade Tribunal (the Tribunal) provides Canadian and international businesses with access to fair, transparent and timely processes for the investigation of trade remedy cases and complaints concerning federal government procurement and for the adjudication of appeals on customs and excise matters. At the request of the Government, the Tribunal provides advice in tariff, trade, commercial and economic matters.

MISSION STATEMENT

The Tribunal's mission is to render sound, transparent and timely decisions in trade, customs and procurement cases for Canadian and international businesses and to provide the Government with sound, transparent and timely advice in tariff, trade, commercial and economic matters.

VISION

The Tribunal will be recognized as a centre of excellence in matters of trade, customs and procurement, and as a model administrative tribunal in matters of governance.

STRATEGIC OUTCOME

Fair, timely and transparent disposition of international trade cases, procurement cases and government mandated inquiries within the Tribunal's jurisdiction.

MANDATE

The Tribunal is the main quasi-judicial institution in Canada's trade remedies system and has authority to:

- inquire into whether dumped or subsidized imports have caused, or are threatening to cause, injury to a domestic industry;
- inquire into complaints by potential suppliers concerning procurement by the federal government that is covered by the *North American Free Trade Agreement (NAFTA)*, the *Agreement on Internal Trade*, the *World Trade Organization (WTO) Agreement on Government Procurement* and the *Canada-Chile Free Trade Agreement*, or any other applicable trade agreement;
- hear appeals of decisions of the *Canada Border Services Agency (CBSA)* made under the *Customs Act* and the *Special Import Measures Act (SIMA)* and of the *Minister of National Revenue* under the *Excise Tax Act*;
- inquire 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*;
- investigate requests from Canadian producers for tariff relief on imported textile inputs that they use in their production operations and to make recommendations to the *Minister of Finance* on the requests; and
- inquire into complaints by domestic producers that increased imports are causing, or threatening to cause, injury to domestic producers and, as directed, make recommendations to the *Government* on an appropriate remedy.

INTRODUCTION

Canada is a trading nation, and trade makes a significant contribution to Canada's economic well-being. The Tribunal plays an important role in administering some of the international and Canadian rules that govern trade.

The Tribunal helps to protect Canadian industry against unfairly traded imports and rapid build-ups in other imports. It promotes open and fair government procurement by responding to complaints by potential suppliers. The Tribunal supports fair tariff treatment for goods imported into Canada and, at the request of the Government, provides advice on economic, trade, commercial and tariff matters.

The Tribunal provides a fair, transparent, accessible and efficient trade remedies system to Canadians and to offer the Government its best advice through the Tribunal's fact-finding inquiries and standing reference. The Tribunal's advice allows the Government to formulate strategies for making the Canadian business sector better able to provide jobs and growth in today's globalized commercial environment.

The Tribunal was established in 1988. It is an independent body that reports to Parliament through the Minister of Finance. The Tribunal is a quasi-judicial administrative tribunal. Some of the Tribunal's rules and procedures are similar to those of a court of law, but the Tribunal applies them in a less formal manner.

The main legislation governing the work of the Tribunal is the *Canadian International Trade Tribunal Act (CITT Act)*, *SIMA*, the *Customs Act* and the *Excise Tax Act*.

MEMBERS AND STAFF

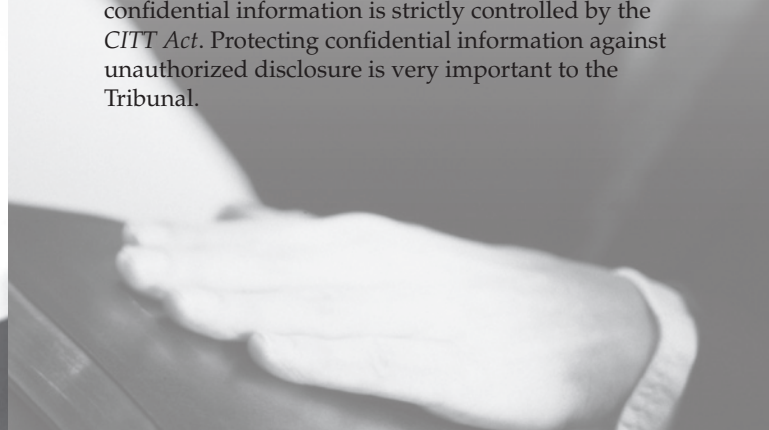
Cases are decided by Tribunal members. The Tribunal may have up to nine full-time members, including a chairperson and two vice-chairpersons. The Government appoints members for fixed terms of up to five years. A panel of three members decides most Tribunal cases, although a single member can decide some types of cases.

The members are supported by a permanent staff of public servants that are responsible for the communications and court registry functions (Secretariat), the research and investigation of cases (Research Branch), legal services to the Members and staff (Legal Services Branch), human resources services (Human Resources Branch), and corporate services (Corporate Services Branch).

PROCESS

The Tribunal always gives individuals and businesses an opportunity to submit their evidence and views and to respond to other parties before it makes a final decision. The Tribunal often uses requests for information and questionnaires to gather information for cases. Frequently, the Tribunal holds hearings. A hearing gives parties an opportunity to call witnesses and allows them to explain their point of view and present arguments. Hearings are open to the public and are usually held at the Tribunal's offices in Ottawa, Ontario. However, hearings may be held elsewhere in Canada. Sometimes, the Tribunal decides cases using only the written information that it has collected.

The Tribunal has the power to subpoena witnesses and to require parties to submit information, even if it is commercially confidential. Access to companies' confidential information is strictly controlled by the *CITT Act*. Protecting confidential information against unauthorized disclosure is very important to the Tribunal.



TRIBUNAL ACTIVITIES

The Tribunal has two roles: a quasi-judicial role and an advisory role. In its quasi-judicial role, the Tribunal adjudicates unfair trade cases, bid challenges, appeals of customs and excise tax decisions, and carries out safeguard inquiries. In its advisory role, the Tribunal conducts economic, trade and tariff inquiries and inquiries under the standing textile reference.

Unfair Trade—Dumping and Subsidizing Inquiries and Reviews

International trade agreements allow countries to protect their industries against the harmful effects of dumping or subsidizing. Dumping occurs when goods are exported at prices that are lower than the selling price of comparable goods in the home country or when goods are exported at unprofitable prices. Subsidizing occurs when goods imported into a country benefit from foreign government financial assistance.

In Canada, *SIMA* is the law that protects producers from unfair import competition. The Tribunal and the CBSA are jointly responsible for administering *SIMA*.

An unfair trade case starts when a Canadian producer submits a complaint to the CBSA. The CBSA's role is to determine whether dumping or subsidizing has occurred.

The Tribunal's role is to determine whether the dumping or subsidizing is financially injuring or threatening to injure Canadian producers. In reaching its decision, the Tribunal gathers information from Canadian producers, as well as importers, exporters and end users of the goods in question. It also invites submissions from interested parties.



It takes approximately seven months to complete an unfair trade case, from the time when the CBSA starts its investigation to the time when the Tribunal completes its inquiry by making its final decision on whether the dumping or subsidizing is causing or is threatening to cause injury and issues a finding.

If the Tribunal determines that dumped or subsidized imports are injuring or threatening to injure Canadian producers, the CBSA collects anti-dumping or countervailing duties on the imported goods. These duties give Canadian producers an opportunity to compete fairly with the goods in question.

An injury finding ordinarily lapses at the end of five years, unless it is reviewed and continued, in which case the duties continue to be collected for another five-year period. The five-year expiry review process is also a shared responsibility between the CBSA and the Tribunal. The CBSA determines whether there is a likelihood of resumed dumping or subsidizing, and the Tribunal determines whether there is a likelihood of resumed injury.

The Tribunal may also review its decision at any time while a finding is still in effect. These reviews are called interim reviews. The Tribunal can do this on its own initiative or at the request of the CBSA, interested parties or any other person or government. For example, companies can request the Tribunal to amend its decision to exclude particular goods that they want to import.

Bid Challenges—Procurement Review Inquiries

Potential suppliers that believe that they have been treated unfairly during the solicitation or evaluation of bids for eligible contracts with a federal government institution may make a formal complaint to the Tribunal. Potential suppliers with such a complaint are encouraged to first try to resolve the issue with the government institution responsible for the procurement in question.

The Tribunal's role is to determine whether the government institution responsible for the procurement has met the requirements of international and national trade agreements and Canadian legislation.

The Tribunal does not inquire into all the complaints that it receives. The complaint must be received within the appropriate time frame and give a reasonable indication that the government institution failed to meet certain procedural requirements. Also, the procurement must exceed a certain minimum value and must be for a product or service that is covered by one of the trade agreements.

If the Tribunal decides to conduct an inquiry and if the contract in question has not been awarded, the Tribunal may order the government institution to postpone awarding any contract until the Tribunal has considered the complaint. The Government has the authority to override this decision in cases involving urgency or if the postponement would be contrary to the public interest.

If the Tribunal finds that the complaint is valid, it can recommend that the government institution remedy the situation in several different ways, including re-tendering the contract, re-evaluating the bids or compensating the complainant. In addition, the Tribunal generally awards costs to the winning party to offset the expenses that it incurred in appearing before the Tribunal.

The ordinary time frame for a procurement review is 90 days from the time when a complaint is received to the time when the Tribunal issues its decision.

Government institutions are required to implement the Tribunal's recommendations to the greatest extent possible.

Canadian International Trade Tribunal / Tribunal canadien du commerce extérieur

I. Complainant Identification
A complainant can be a bidder or prospective bidder (i.e. individual, partnership, corporation, etc.)

PROCUREMENT COMPLAINT

Complainant's full name (please print) _____

Street address _____

P.O. Box _____

County _____ City _____

Telephone No. (including area code) _____

Email _____

Appeals

Under the *Excise Tax Act*, the *Customs Act* and *SIMA*, the Minister of National Revenue and the CBSA apply various taxes and duties to imported goods. Individuals and businesses do not always agree with the Minister of National Revenue and the CBSA when they impose these duties and taxes. They can appeal some of these decisions to the Tribunal.

The Tribunal reviews submissions from the individual or business making the appeal, the Minister of National Revenue or the CBSA, and other people with an interest in the case. The Tribunal's role is to decide the appeal on the basis of a hearing or a written record.

If the Tribunal agrees with the individual or business making the appeal, it allows the appeal. The Minister of National Revenue or the CBSA then adjust the application of duties or taxes accordingly. If the Tribunal does not agree, it dismisses the appeal, and the Minister of National Revenue and the CBSA do not adjust the application of duties or taxes.

The Tribunal also hears and decides appeals from decisions of the CBSA under *SIMA*. These appeals relate to the application, to imported goods, of Tribunal findings or orders concerning injury or retardation caused by dumping and/or subsidizing and the normal value, export price or amount of subsidy in relation to the imported goods.

The Tribunal usually issues its decision on an appeal within 120 days of the hearing.



Economic, Trade, Commercial and Tariff Inquiries

The Tribunal acts in an advisory capacity to the Government on economic, trade, commercial or tariff issues. The Governor in Council or the Minister of Finance can direct the Tribunal to conduct inquiries and make recommendations on issues requiring an independent and expert opinion based on a comprehensive review of facts, and sometimes on competing economic interests. For example, the Tribunal has investigated the competitiveness of various Canadian industries and has recommended new tariff measures for the textile and apparel industries. The Government can also direct the Tribunal to conduct safeguard inquiries and to recommend safeguard measures.

Terms of reference establish the scope of an inquiry. The Tribunal submits a report to the Governor in Council or the Minister of Finance by the date specified in the terms of reference and the Government then decides how to respond to the analysis and recommendations in the Tribunal's report.

Textile Tariff Investigations

The Tribunal investigates requests from Canadian producers for tariff relief on imported textile inputs for use in their manufacturing operations.

In textile tariff investigations, the Tribunal makes a recommendation to the Minister of Finance on whether or not to grant the tariff relief based on its assessment of the course of action that would maximize net economic gains for Canada. The Tribunal can recommend the implementation of full or partial tariff relief for an indeterminate period of time or a specific term or that no relief be provided at all. The Tribunal can also recommend that any tariff relief be restricted to specific textile inputs or end uses.

If the Minister of Finance accepts a Tribunal recommendation to grant tariff relief, the *Customs Tariff* is amended to implement the tariff relief.

The usual time frame for a textile tariff investigation is 100 days from the time when the Tribunal begins its inquiry to the time when it issues its report to the Minister of Finance.

Safeguard Inquiries

International trade agreements allow countries to protect their industries against the harmful effects of rapid build-ups in the volume of imports. Canadian producers that believe that increased volumes of imports are causing or threatening to cause them injury can file a complaint to request the Tribunal to conduct a safeguard inquiry.

The Tribunal conducts two different types of safeguard inquiries, depending on the source of the imported goods identified by Canadian producers and the type of complaint. In global safeguard inquiries, the Tribunal looks at the impact of goods imported from all countries. In safeguard inquiries specific to the People's Republic of China (China), the Tribunal examines only the impact of goods imported from China. There are two types of China-specific safeguard inquiries: market disruption inquiries and trade diversion inquiries.

The Tribunal's role is to determine whether the increased imports have caused injury or threaten to cause injury to Canadian producers. The Tribunal gathers information from Canadian producers, as well as importers, exporters and end users of the goods under investigation. At the end of a safeguard inquiry, the Tribunal submits a report with its determination to the Government. The Government may also request the Tribunal to recommend what safeguard measures to apply. If the Tribunal determines that Canadian producers have been injured or are threatened with injury by increased imports, the Government may decide to apply safeguard measures, such as import quotas or import surtaxes.

The time frame for global safeguard inquiries is generally 180 days from the time when the Tribunal begins its inquiry to the time when it issues its report to the Government. For China-specific safeguard inquiries, the time frame is either 90 days or 70 days, depending on the type of inquiry.

APPEAL OF TRIBUNAL DECISIONS

Individuals and businesses may, depending on the type of case, request judicial review of a Tribunal decision by the Federal Court of Appeal or appeal a Tribunal decision to the Federal Court of Appeal or the Federal Court. In certain dumping and/or subsidizing cases involving goods from the United States or Mexico, judicial review may be replaced by a binational panel review under *NAFTA*. Foreign governments that are members of the WTO may also refer certain Tribunal decisions to the WTO's dispute settlement mechanism.

COMMUNICATION WITH THE TRIBUNAL

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
15th Floor
333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
Canada

Telephone: 613-949-2309
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca
Web site: www.citt-tcce.gc.ca