

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

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### CANADA - CREATION OF A NEW INDEPENDENT TRIBUNAL

The following communication, dated 13 March 1989, has been received from the Permanent Mission of Canada.

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Pursuant to the GATT notification provisions, I have the pleasure to inform you of the recent creation in Canada of a new independent tribunal which will play an important part in the conduct of Canada's trade policy.

The new tribunal, the Canadian International Trade Tribunal (CITT), began operations on 31 December 1988. It has replaced the Canadian Import Tribunal, the Tariff Board and the Textile and Clothing Board. This institutional change will ensure that trade matters referred to the new Tribunal are dealt with in a coherent manner.

We attach hereto, for distribution to the contracting parties together with this letter, a brief summary of the background, internal organization and functions of the new Tribunal.

THE CANADIAN INTERNATIONAL TRADE TRIBUNAL

WHAT IS IT AND WHAT DOES IT DO?

The CITT is an independent quasi-judicial body which reports to Parliament through the Minister of Finance.

The Tribunal began operations on 31 December 1988. It took over all the inquiry and appeal functions of the Tariff Board, the Canadian Import Tribunal and the Textile and Clothing Board. The Government's intention in amalgamating the three institutions was to strengthen and streamline Canada's facilities for trade remedies and inquiries.

The main legislation governing the work of the CITT is the Canadian International Trade Tribunal Act and its Regulations, the CITT Rules of Procedure, the Special Import Measures Act, the Customs Act, the Excise Tax Act and the Canada-USA Free Trade Agreement Act.

The Tribunal carries out its statutory responsibilities in an independent and impartial manner. It is not part of any other government department or agency. While the government or the Minister may request the Tribunal to conduct various enquiries, such requests are made publicly and the Tribunal decides the manner in which it will respond.

The Tribunal is composed of nine full time members including a Chairman and two Vice-Chairmen, all of whom serve terms of up to five years. Members come from a variety of backgrounds, careers and regions.

The Tribunal is supported by a staff of just over eighty people. Its principal officers are the Executive Director, Research, responsible for economic and financial analysis of firms, industries and other parties involved in Tribunal inquiries; the Secretary, responsible for administration, external and public relations, and the court registrar functions of the Tribunal; and the General Counsel, responsible for the provision of legal services to the Tribunal.

The CITT, as a quasi-judicial body, has rules and procedures similar to those of a court of law, but not quite as formal or strict. The CITT Act states that hearings, conducted by panels of three members or more, should be carried out as "informally and expeditiously" as possible. The CITT has the power to subpoena witnesses and require parties to submit documents, even when these are commercially confidential. The CITT Act contains provisions that strictly control access to confidential documents.

In virtually all of its programmes, the CITT conducts hearings open to the public. These are normally held in Ottawa, Ontario, but, when appropriate, may take place anywhere in Canada.

The Tribunal is located in Ottawa and occupies the offices and court rooms previously used by the Tariff Board and the Canadian Import Tribunal.

The Tribunal is the main judicial institution in Canada's trade remedies system. On the administrative side, important components include Revenue Canada - Customs and Excise and the Special Trade Relations Bureau of External Affairs. Decisions of the Tribunal can be appealed to the Federal Court of Canada, to GATT dispute settlement panels, and, where anti-dumping and countervailing duty cases involve American trade, to bi-national panels which are provided for under the Canada-USA Free Trade Agreement.

The CITT has both judicial and advisory functions, and a number of its programmes fall into each category.

#### JUDICIAL FUNCTIONS

For two of its programmes, the Tribunal acts as an administrative court.

These are:

(a) Appeals from Revenue Canada rulings

In this programme, formerly conducted by the Tariff Board, the CITT acts virtually as a court of easy access, offering recourse to those who wish to contest Revenue Canada decisions on customs, excise and related matters. Appeal procedures are informal and accessible to individuals and small businesses.

(b) Injury findings in anti-dumping and countervailing duty cases

In this programme, inherited from the Canadian Import Tribunal, the CITT conducts inquiries and makes findings on whether or not imported goods, which Revenue Canada has found to be dumped or subsidized, are causing "material injury" to Canadian production of such goods. If the Tribunal finds injury, Revenue Canada levies on the imported goods anti-dumping or countervailing duties equal to the margin of dumping or the subsidy.

#### ADVISORY FUNCTIONS

In a number of its programmes, the CITT acts almost as a standing commission of inquiry with powers to conduct research, find facts, hold public hearings and report on a broad range of trade-related matters. These programmes relate to various import safeguard inquiries and general inquiries into trade and tariff matters. They are:

(a) Import safeguard inquiries

- Government-directed import safeguard inquiries

If the government considers that imports of a particular product are causing or threatening to cause "serious injury" to Canadian producers of that product, it may ask the Tribunal to conduct an inquiry into, and report on, whether injury has occurred or is likely to occur. The government may also ask the Tribunal to make recommendations, if it finds serious injury, on how that injury might be alleviated, for example, by import quotas or surcharges or by adjustment assistance measures. The decision on whether to provide relief rests with the government. In the past, both the Canadian Import Tribunal and the Textile and Clothing Board could be asked by the government to conduct such inquiries.

- Producer-directed import safeguard inquiries

This programme, sometimes called "direct access," is new. Previously, direct access was only available through the Textile and Clothing Board, and limited to the textile and clothing industries.

Under this programme, Canadian producers, if they form a "major proportion" of an industry and furnish the Tribunal with a "properly documented complaint", have the right to have the CITT conduct an inquiry into whether imports of goods, like or directly competitive with those which they produce, are being imported in such quantities as to cause or threaten serious injury to Canadian production.

As in government-directed safeguard inquiries, the Tribunal must conduct an inquiry and report its finding to the government. Similarly, the government then must decide whether to provide relief to the Canadian industry, if the Tribunal has found injury. The government has the option also, if the Tribunal has undertaken a producer-directed inquiry, to ask it to make recommendations, if the Tribunal finds injury.

- Safeguard inquiries concerning the GPT or CARIBCAN

As part of its policy to promote economic development in developing countries, the government applies under its General Preferential Tariff (GPT) Programme a reduced import tariff to the products of more than 150 countries. Under CARIBCAN, the government provides duty-free access for most products exported to Canada by the Commonwealth Caribbean countries.

Producers who believe they are being injured or threatened with injury by imports receiving GPT or CARIBCAN preferences may ask the CITT to conduct a safeguard inquiry. If, on the basis of the producer's properly documented complaint, the CITT feels there is prima facie evidence of

injury, it must conduct an inquiry and report on whether there is injury to Canadian production as a result of the GPT or CARIBCAN. If the Tribunal finds injury, it is up to the government to decide whether or not to remove or reduce the GPT or CARIBCAN preference. This programme was carried out formerly by the Tariff Board.

(b) General inquiries into trade and tariff matters

The government may ask the CITT to conduct an inquiry and to report on any matter relating to the economic, trade or commercial interest of Canada. The Minister of Finance also may ask the Tribunal to conduct an inquiry and report on any tariff-related matter including any such matter which concerns the international rights and obligations of Canada.

The three predecessor bodies could undertake general trade and tariff inquiries at the request of the government. The CITT's powers are broader, covering not simply import trade, but any matter relating to trade which affects Canada's economic and commercial situation, and negotiating interest.

When the CITT conducts a general inquiry of this sort, it will normally invite written submissions from interested parties, publish its own background papers and hold public hearings as a means of getting out into the open all the facts and opinions which are relevant to the inquiry.