



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2010-068

Enterasys Networks of Canada
Ltd.

v.

Department of Public Works and
Government Services

*Order and reasons issued
Monday, November 8, 2010*

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IN THE MATTER OF a complaint filed by Enterasys Networks of Canada Ltd. pursuant to subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO a decision by the Canadian International Trade Tribunal to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*;

AND FURTHER TO a request filed by the Department of Public Works and Government Services on October 21, 2010, pursuant to rule 23.1 of the *Canadian International Trade Tribunal Rules*, requesting that the Canadian International Trade Tribunal dismiss the complaint.

BETWEEN

ENTERASYS NETWORKS OF CANADA LTD.

Complainant

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

ORDER

Pursuant to subsection 30.13(5) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has ceased to conduct its inquiry into the complaint, and the proceedings in respect of this particular complaint are terminated.

Stephen A. Leach

Stephen A. Leach
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Jason W. Downey

Jason W. Downey
Member

Dominique Laporte

Dominique Laporte
Secretary

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STATEMENT OF REASONS

COMPLAINT

1. On October 4, 2010, Enterasys Networks of Canada Ltd. (Enterasys) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ concerning a procurement (Solicitation No. 05005-105617/A [RVD 788]) by the Department of Public Works and Government Services (PWGSC) for the supply and delivery of networking equipment.
2. Enterasys requested that the RVD be cancelled and re-tendered in compliance with the trade agreements.
3. On October 7, 2010, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the requirements of subsection 30.11(2) of the *CITT Act* and the conditions set out in subsection 7(1) *Canadian International Trade Tribunal Procurement Inquiry Regulations*.²
4. The Tribunal advised the parties that it would limit the inquiry to the following three allegations:
 - (1) that equipment is being purchased that is not part of the permitted category 1.1 specifications;
 - (2) that PWGSC was not justified to identify products by brand names and product codes in view of the provisions of the applicable trade agreements; and
 - (3) that there was insufficient information and insufficient time available to bid Enterasys equipment that is equivalent to the equipment identified by brand name and product code in RVD 788.
5. On October 21, 2010, PWGSC advised the Tribunal that RVD 788 had been cancelled because the product sought had indeed been improperly categorized. PWGSC also advised that it intended to solicit for the requirement under the proper product category. Given that the RVD had been cancelled, PWGSC submitted that there was no longer a designated contract and, therefore, no longer a valid basis to Enterasys' complaint.

TRIBUNAL'S ANALYSIS

6. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal may, at any time, cease conducting an inquiry "... if it is of the opinion that the complaint is trivial ...". The ordinary meaning of "trivial" is "... concerned only with ... unimportant matters."³
7. The cancellation and planned re-tendering of the RVD provide the essential remedy that Enterasys requested. Consequently, they render the complaint moot and therefore unimportant or, in other words, trivial. The Tribunal therefore decides, pursuant to subsection 30.13(5) of the *CITT Act*, to cease inquiring into the complaint.

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].
2. S.O.R./93-602.
3. *Shorter Oxford English Dictionary*, 5th ed., s.v. "trivial".

ORDER OF THE TRIBUNAL

8. Pursuant to subsection 30.13(5) of the *CITT Act*, the Tribunal has ceased to conduct its inquiry, and the proceedings in respect of this particular complaint are terminated.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member