



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Procurement

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## ORDER AND REASONS

File No. PR-2010-069

Enterasys Networks of Canada  
Ltd.

v.

Department of Public Works and  
Government Services

*Order and reasons issued  
Wednesday, November 10, 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 November 3, 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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Tribunal Member:	Stephen A. Leach, Presiding Member Serge Fréchette, Member Jason W. Downey, Member
Director:	Randolph W. Heggart
Investigation Manager:	Michael W. Morden
Senior Investigator:	Michelle Mascoll
Counsel for the Tribunal:	Nick Covelli
Complainant:	Enterasys Networks of Canada Ltd.
Counsel for the Complainant:	Claude-Alain Burdet
Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	David M. Attwater Susan D. Clarke Ian McLeod Roy Chamoun David Covert

Please address all communications to:

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

Telephone: 613-993-3595  
Fax: 613-990-2439  
E-mail: [secretary@citt-tcce.gc.ca](mailto:secretary@citt-tcce.gc.ca)

## 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*<sup>1</sup> concerning a procurement (Solicitation No. 4M025-100030/A [RVD 789]) 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*.<sup>2</sup>
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 789.
5. On November 3, 2010, PWGSC advised the Tribunal that RVD 789 had been cancelled. 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. On November 4, the Tribunal requested that PWGSC advise it if the solicitation at issue would be re-tendered. On November 5, 2010, PWGSC advised the Tribunal that the solicitation at issue would be re-tendered.

### 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."<sup>3</sup>
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.

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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