

Ottawa, Wednesday, November 12, 1997

File No.: PR-97-020

IN THE MATTER OF a complaint filed by Océanide Inc. under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985, c. 47 (4th Supp.), as amended;

AND IN THE MATTER OF a decision to conduct an inquiry into the complaint under subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

**DETERMINATION OF THE TRIBUNAL**

The Canadian International Trade Tribunal hereby concludes that it does not have jurisdiction to hear the complaint. Consequently, the complaint is dismissed.

Raynald Guay

Raynald Guay  
Member

Michel P. Granger

Michel P. Granger  
Secretary

Date of Determination: November 12, 1997

Tribunal Member: Raynald Guay

Investigation Manager: Randolph W. Heggart

Counsel for the Tribunal: Joël J. Robichaud

Complainant: Océanide Inc.

Government Institution: Department of Fisheries and Oceans



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## FINDINGS OF THE TRIBUNAL

### INTRODUCTION

On September 9, 1997, Océanide Inc. (Océanide) filed a complaint under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*<sup>1</sup> (the CITT Act) concerning the procurement by the Department of Fisheries and Oceans (the Department) of services to develop existing software to adjust the Snow Crab Trawl survey histograms to reflect better true snow crab distribution throughout the snow crab fishery zone (Solicitation No. F4630-7-8039).

On September 9, 1997, the Canadian International Trade Tribunal (the Tribunal) determined, on the basis of the existing record, that the conditions for inquiry set forth in section 7 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*<sup>2</sup> (the Regulations) had been met in respect of the complaint and decided to conduct an inquiry into the complaint.

On October 3, 1997, the Department filed with the Tribunal a Government Institution Report (GIR) in accordance with rule 103 of the *Canadian International Trade Tribunal Rules*.<sup>3</sup> On October 15, 1997, the Tribunal wrote to the complainant requesting its comments on the GIR. Specifically, the Tribunal informed Océanide that the GIR indicated that the contract in dispute had an estimated value of \$37,980 and was for the provision of services only. Accordingly, the Tribunal asked Océanide to address this question in its comments on the GIR. Océanide filed its comments on the GIR on October 23, 1997.

In the covering letter enclosed with the GIR, the Department states that it is unclear why the Tribunal has decided to pursue its inquiry into this matter. Indeed, it is the Department's understanding that the contract in dispute is seemingly outside the scope of the Tribunal's mandate "due to the nature of the service provided and its value." In answering the Tribunal's request, Océanide confirmed that the amount of the contract in dispute was in the order of \$40,000 and, on this basis, that it would appear not to fall within the scope and coverage of the *North American Free Trade Agreement*<sup>4</sup> (NAFTA) or the *Agreement on Internal Trade*<sup>5</sup> (AIT). However, Océanide submits that the Tribunal should, nevertheless, consider its

1. R.S.C. 1985, c. 47 (4th Supp.).
2. SOR/93-602, December 15, 1993, *Canada Gazette* Part II, Vol. 127, No. 26 at 4547, as amended.
3. SOR/91-499, August 14, 1991, *Canada Gazette* Part II, Vol. 125, No. 18 at 2912, as amended.
4. Done at Ottawa, Ontario, on December 11 and 17, 1992, at Mexico, D.F. on December 14 and 17, 1992, and at Washington, D.C., on December 8 and 17, 1992 (in force for Canada on January 1, 1994).
5. As signed at Ottawa, Ontario, on July 18, 1994.

complaint, as it affects other contracts similarly. Together, these contracts exceed by far the \$100,000 monetary threshold applicable to the contracting of services under the AIT.

### **TRIBUNAL'S DECISION**

Subsection 30.11(1) of the CITT Act provides, in part, that “[s]ubject to the regulations, a potential supplier may file a complaint with the Tribunal concerning any aspect of the procurement process that relates to a designated contract.”

Section 30.1 of the CITT Act defines “designated contract” as: “a contract for the supply of goods or services that has been or is proposed to be awarded by a government institution and that is designated or of a class of contracts designated by the regulations.”

Subsection 3(1) of the Regulations reads, in part: “For the purposes of the definition ‘designated contract’ in section 30.1 of the Act, any contract or class of contract concerning a procurement of goods or services or any combination of goods or services, as described in Article 1001 of NAFTA, in Article 502 of the Agreement on Internal Trade ... is a designated contract.”

Article 1001 of NAFTA, reads, in part:

1. This Chapter applies to measures adopted or maintained by a Party relating to procurement:
  - (c) where the value of the contract to be awarded is estimated<sup>[6]</sup> to be equal to or greater than a threshold, calculated and adjusted according to the U.S. inflation rate as set out in Annex 1001.1c, of
    - (i) for federal government entities, US\$50,000<sup>[7]</sup> for contracts for goods, services or any combination thereof.

Article 502 of the AIT, reads, in part:

1. This Chapter applies to measures adopted or maintained by a Party relating to procurement within Canada by any of its entities listed in Annex 502.1A, where the procurement value is:
  - (b) \$100,000 or greater, in cases where the largest portion of the procurement is for services.

Having reviewed all the evidence on the record, the Tribunal is satisfied that the contract in dispute is a service contract with an estimated value of \$37,980. Accordingly, the contract is not a designated contract within the meaning of section 30.1 of the CITT Act and, therefore, the complaint is dismissed.

Raynald Guay

Raynald Guay

Member

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6. Article 1002(2) of NAFTA provides that the value of a contract shall be estimated as at the time of publication of a notice in accordance with Article 1010.

7. CAN\$70,700.