CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, June 3, 1999

File No.: PR-98-051

IN THE MATTER OF a complaint filed by National Airmotive Corporation 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 continue its inquiry in File No. PR-98-051. Consequently, the complaint is dismissed.

Pierre Gosselin
Pierre Gosselin
Member

Michel P. Granger
Michel P. Granger
Secretary

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

Date of Determination:	June 3, 1999
Tribunal Member:	Pierre Gosselin
Investigation Manager:	Randolph W. Heggart
Counsel for the Tribunal:	John L. Syme
Complainant:	National Airmotive Corporation
Counsel for the Complainant:	Barbara A. McIssac, Q.C. Kris Klein
Intervener:	Standard Aero Limited
Counsel for the Intervener:	David M. Attwater
Government Institution:	Department of Public Works and Government Services

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, June 3, 1999

File No.: PR-98-051

IN THE MATTER OF a complaint filed by National Airmotive Corporation 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.*

STATEMENT OF REASONS

BACKGROUND

On March 10, 1999, National Airmotive Corporation (NAC) filed a complaint with the Canadian International Trade Tribunal (the Tribunal) under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*[1] (the CITT Act) concerning the procurement (Solicitation No. W8467-5-CL03/000/B) by the Department of Public Works and Government Services (the Department). The solicitation was for repair and overhaul (R&O), modification, reduction to spares and related support services for the Allison T56-A7B, A15, A15LFE and A14LFE Aero engines and its associated components and accessories, be it at the contractor's plant or by mobile repair party, as well as for the provisioning of accountable advance spare parts in support of the R&O work during the period from April 1, 1999, to March 31, 2001, on a sole source basis from Standard Aero Limited (Standard Aero) for the Department of National Defence (DND).

NAC alleged that the Department, in relying on a limited tendering procedure to procure the R&O services, is in breach of its obligations under the *North American Free Trade Agreement*[2] (NAFTA) and the *Agreement on Government Procurement*[3] (the AGP).

NAC requested, as a remedy, that a postponement of award order be issued and that a new solicitation for the designated contract be initiated. Alternatively, NAC requested to be compensated by an amount equal to the profit that it would have made if it had had the opportunity to tender and win the contract. NAC further requested its reasonable costs incurred in preparing and pursuing this complaint.

On March 15, 1999, the Tribunal informed the parties that the complaint had been accepted for inquiry, as it met the conditions for inquiry set out in section 7 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*[4] (the Regulations). That same day, the Tribunal requested comments from the Department on whether this procurement is covered by NAFTA. In addition, the Tribunal ordered the postponement of any contract in connection with the solicitation until the Tribunal determined the validity of

1. R.S.C. 1985, c. 47 (4th Supp.).
2. 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).
3. As signed at Marrakesh on April 15, 1994 (in force for Canada on January 1, 1996).
4. SOR/93-602, December 15, 1993, *Canada Gazette* Part II, Vol. 127, No. 26 at 4547, as amended.

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

the complaint. On March 22, 1999, the Department certified that the solicitation was urgent and that a delay in awarding the contract would be contrary to the public interest. That same day, the Tribunal indicated to the Department that submissions on whether this procurement is covered by the AGP were also required. On March 29, 1999, the Department filed the submissions requested by the Tribunal on March 15 and 22, 1999. On April 1, 1999, the Tribunal rescinded its postponement of award order of March 15, 1999. On April 7, 1999, the Tribunal granted Standard Aero leave to intervene in the matter. On April 6, 1999, NAC filed its comments in response to the Department's submissions of March 29, 1999, with the Tribunal and, on April 21, 1999, NAC filed an additional document with the Tribunal. The Department filed additional submissions with the Tribunal on April 30, 1999.

Given that there was sufficient information on the record to determine the validity of the complaint, the Tribunal decided that a hearing was not required and decided the question on the basis of the information on the record.

POSITION OF PARTIES

The Department submitted that the complaint does not relate to a "designated contract" under NAFTA or the AGP within the meaning of section 30.1[5] of the CITT Act and subsection 3(1)[6] of the Regulations. The Department further submitted that the complaint was not filed within the time limits specified in subsections 6(1) and (2) of the Regulations and that the conditions for an extension of the time for filing a complaint, under subsections 6(3) and (4) of the Regulations, had not been met.

Concerning the first question, the Department submitted that the solicitation is for the R&O of T56 Allison aircraft engines and the components necessary for this work. The requirement was coded "JX2840" in the Advance Contract Award Notice[7] (ACAN). In summary, the Department submitted that both NAFTA and the AGP specifically exclude such contracts. The Department submitted that, under NAFTA, there are two provisions, both of which exclude the contract from coverage for Canada. The first relates to an exclusion taken by Canada for all services relating to goods procured by DND which are not covered by the agreement. The second is Canada's specific exclusion of all services relating to transportation equipment.

In the Department's submission, under the AGP, two separate exclusion provisions also exist. The first, as in NAFTA, relates to the exclusion taken by Canada for all services relating to goods procured by DND which are not covered by the agreement. The second is that Canada has not listed for inclusion in the AGP those services relating to transportation equipment. The Department submitted that, under both

5. Section 30.1 of the CITT Act provides that a "designated contract" means "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."
6. Subsection 3(1) of the Regulations provides as follows: "For the purposes of the definition 'designated contract' in section 30.1 of the [CITT] 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 . . . or in Article I of the Agreement on Government Procurement, by a government institution, is a designated contract."
7. A notice of intent to solicit a bid and negotiate with only one firm. This is not a competitive bid solicitation notice. Suppliers, however, on or before the closing date indicated, may identify their interest and demonstrate their capability to perform the contract.

NAFTA and the AGP, the solicitation is: (1) a service; (2) correctly classified; and (3) appropriately excluded from coverage by Canada under the agreements.

The Department submitted that the requirement for aircraft engine R&O is not covered by NAFTA by virtue of Note 1 of the "Schedule of Canada," Section B, Annex 1001.1b-2.

Specifically, the Department submitted that:

- in NAFTA, Appendix 1001.1b-2-B, "Common Classification System" (CCS), all repair services are classified in service group "J," entitled "Maintenance, Repair, Modification, Rebuilding and Installation of Goods/Equipment;"[8]
- under Annex 1001.1b-2 of NAFTA, "Services," subparagraph 1(a) of Section A, "General Provisions," provides for all services to be covered except for services that are specifically excluded and subject to Section B, "Excluded Coverage." Section B includes a list of exclusions and "Notes" for Canada;
- Note 1 states, in part, that all services, with reference to those goods purchased by DND which are not identified as subject to coverage by this chapter (Annex 1001.1b-1), are exempt from the disciplines of the Chapter; therefore, the determination of an excluded service for DND is dependent on how the goods are classified and on whether those goods are actually subject to coverage by DND under Annex 1001.1b-1, "Goods;"
- the engines on which the R&O work is to be done are accurately described as belonging to FSC Group 28 entitled "Engines, Turbines and Components," Class 40 entitled "Gas Turbines and Jet Engines, Aircraft; and Components;"
- a classification based on Group 29, "Engine Accessories," is not appropriate in this case, as this is not a requirement for the repair of engine accessories, but rather a requirement for the repair to the engine itself and its components.

Accordingly, the Department submitted that the aircraft engine R&O work to be carried out for DND, which is coded as "JX2840," is a service with reference to FSC Group 28 and that, because FSC Group 28 is not covered by Annex 1001.1b-1, the services relating to the goods in FSC Group 28 are likewise not covered.

Furthermore, the Department submitted that the subject services are also excluded from NAFTA under Canada's comprehensive exception relating to all transportation equipment (Annex 1001.1b-2, Section B, "Excluded Coverage" under "Schedule of Canada," service group "J," "Maintenance, Repair, Modification, Rebuilding and Installation of Equipment," specifically "Services with reference to transportation equipment"). The end use of an aircraft, the Department submitted, is irrelevant to its classification under the CCS. Aircraft are a means of transportation and conveyance of people and goods, whether the purpose be military or civilian, and the R&O of the aircraft engines are services with reference to transportation equipment, which are excluded services.

8. More detailed classifications in service group "J" are constructed in Canada by adding a second letter to describe whether the requirement is maintenance, repair, etc.; "X" is the letter for repair. A Federal Supply Classification (FSC) code, at the four digit level, is then added to the "JX," representing the goods being repaired, i.e. "JX2840."

The Department submitted that there are several problems with NAC's argument that paragraphs 1 and 2 of Annex 1001.1b-1 of NAFTA mean that, with respect to Canada, all goods are covered and that the only exception is on the grounds of national security (Article 1018(1) of NAFTA) for those goods listed in Section B being procured by DND and the Royal Canadian Mounted Police, namely: (1) paragraph 2 would be unnecessary and redundant because Article 1018(1) would apply in any event; (2) it would render meaningless the provision in paragraph 1 that refers to exceptions in paragraphs 2 and 3; and possibly (3) it would gut the Annex of all substance except for paragraph 5 and leave Canada with no exceptions for DND.

The correct interpretation of Annex 1001.1b-1, "Goods," the Department submitted, requires that its provisions be read as a whole and not in isolation, i.e. Section B cannot operate on its own. Further, it is not necessary to "read in" the word "only" in paragraph 2, as suggested by NAC, for the provision to make sense. The Department submitted that its interpretation is in accordance with Article 31.1 of the *Vienna Convention on the Law of Treaties*.[9] As well, the Department submitted that no inference can be derived from the manner in which paragraph 5 (exemptions for the U.S. Department of Defense) is drafted, since each country negotiated its own exemptions and they are dealt with differently in Annex 1001.1b-1.

NAC admitted that the provisions contained in the annexes are confusing and inconsistent. However, it submitted that NAFTA is drafted in such a way that redundancies are inevitable and that the provisions contained in the annexes ought to be seen as provisions that simply reiterate what was stated elsewhere. Furthermore, NAC submitted that failing to "read in" or "read down" paragraph 2 of Annex 1001.1b-1 has a drastic effect and should not be resorted to as an interpretation technique in this instance. NAC submitted that, if Canada truly intended to exclude all goods other than those listed in Section B of Annex 1001.1b-1 from the provisions of NAFTA, it could have used a similar provision to the one used by the United States in paragraph 5.

With respect to NAC's claim that the goods relating to the services requirement are goods that are listed in Section B of Annex 1001.1b-1, the Department submitted that NAC acknowledged that the contract at issue is essentially a service contract. The Department submitted that the goods listed in paragraph 51 of NAC's complaint are only components (in the sense used in Article 1001(3) of NAFTA) that will be used in the R&O of the engines and do not represent the essence of the requirement being procured. The Department submitted that the services for this solicitation are properly coded as "JX2840," a class of services not covered by NAFTA. Accordingly, pursuant to Article 1001(3), the procurement at issue is not covered, and Chapter Ten shall not be construed to cover any component of that procurement.

Concerning NAC's argument that the U.S. Department of Defense apparently does not consider the R&O of Allison T56 engines to fall under FSC Group 28 because it tenders such contracts, the Department submitted that, as far as this is a correct representation of US practice, it is not relevant to the proper application of the classification criteria in Canada.

As regards NAC's submission that aircraft engines are not transportation equipment, the Department submitted that this position is completely unsupported in fact or in law and that the taxation case cited by NAC has no bearing on this case.

In response, NAC submitted that the engines at issue are not used in machines that fall under the common usage of the term " transportation equipment" or that an engine itself is not an aircraft and cannot, in

9. UN Treaty Series, 1980, No. 37. Done at Vienna, May 23, 1969 (entered into force on January 27, 1980).

itself, be classified as "transportation equipment." NAC submitted that, if these contracts really related to "transportation equipment," then they ought to have been coded as "JX015" (Aircraft and Airframe Structural Components) or "JX016" (Aircraft Components and Accessories). By not characterizing these engines under either of these codes, it follows that these engines stand alone and are not necessarily an integral part of the aircraft and, therefore, are not "transportation equipment." Furthermore, NAC submitted that aircraft engines can also be used in stationary industrial power applications and, therefore, cannot be classified as "transportation equipment." As well, FSC Group 28 itself contemplates the engines being separate from the mechanisms in which they are contained, and they vary according to whether or not they were made with the intention of either propelling or not propelling aircraft. NAC submitted that the engine should not be seen as "transportation equipment," but rather as a "power-generating mechanism." Finally, on this point, NAC submitted that, given traditional "transportation equipment" such as aircraft, ships, railways and motor vehicles, all have their own FSC codes and further considering that engines have a separate category onto themselves, it therefore follows that engines fall outside the realm of "transportation equipment."

Concerning coverage under the AGP, the Department submitted that, as a result of Note 4 to Canada's Annex 4, the determination of an excluded service for DND is, as under NAFTA, dependent on how the goods are classified and whether those goods are actually covered for DND under the agreement.

The Department submitted that, under the AGP, service commitments are classified under the UN Provisional Central Product Classification (CPC) system. CPC Division 88[10] provides the complete classification system for repair and maintenance. Group 886, "Repair services incidental to metal products, machinery and equipment," includes nine four-digit classes. Of those nine classes, only class 8868 provides for "Repair services of other transport equipment, on a fee or contract basis." This classification is corroborated by the Group of Negotiations on Services,[11] under section 11 entitled "Transport Services," subsection C(d), "Air Transport Services - Maintenance and repair of aircraft." After noting that CPC classes 8861-8866 are identified under section 1 entitled "Business Services," subsection F(n), "Other Business Services - Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)," the Department submitted that class 8868 is the only applicable code for repair of aircraft and aircraft equipment and that the corresponding CCS code (the coding system used by Canada for the purpose of implementing the AGP) is "JX2840," repair of gas turbines and jet engines, aircraft and components.

On this basis, the Department submitted that FSC Group 28 is not listed in Annex 1 to Appendix 1 of the AGP. Maintenance services coded as "JX2846," being a service classification in reference to a non-included FSC, the requirement, therefore, is also not covered by the AGP by virtue of Note 4 of Canada's annex.

Concerning the exclusion of the services in dispute under the "transportation equipment" exclusion, the Department submitted that Canada's Annex 4 to Appendix 1 only lists classes 8861 to 8864 and 8866. Class 8868, which, according to the Department, is the appropriate code for aircraft engine R&O, is not mentioned and, therefore, the services related thereto are also not covered by the AGP.

---

10. Statistical Papers, Series M, No. 77, *Provisional Central Product Classification*, Department of International Economic and Social Affairs, Statistical Office of the United Nations (New York: United Nations, 1991).
11. A document which lists services with their corresponding CPC codes. The purpose of the document was to provide a common basis for discussion during the negotiations of the AGP.

In addressing NAC's submissions on this point, the Department submitted that, for the reasons stated above, the services being procured cannot fall under classes 8861 to 8864 and 8866 of the CPC system for services. Finally, concerning NAC's argument that General Note 4 of the AGP, as it applies to Canada, requires Canada to include a service in its coverage under the AGP if the United States includes the service in its coverage, the Department submitted that, as the services are not listed in Canada's Annex 4, General Note 4 has no application to the situation.

In response, NAC submitted that an engine, by itself, not being "transportation equipment," would be better classified under classes 8861 to 8866 "Repair services incidental to metal products, machinery and equipment." NAC submitted that, all things considered, its interpretation of NAFTA and the AGP is plausible and that these contracts, being for the R&O of engines made in the United States requiring US parts, ought to be competitively procured according to the provisions of NAFTA and the AGP.

Concerning the timeliness of the complaint, the Department submitted that NAC's letters of February 8 and 26, 1999, do not constitute an objection within the meaning of subsection 6(2) of the Regulations. In the alternative, the Department submitted that the ACAN for this solicitation was published on Canada's Electronic Tendering Service (MERX) between October 2 and 14, 1998. This was the time when the complaint should have reasonably become known to NAC. Furthermore, the Department submitted that, even if the February 11, 1999, date advanced by NAC is accepted, given that the complaint was not filed before March 10, 1999, it is still late.

The Department submitted that, contrary to NAC's assertion, the policy of publishing ACANs is not new; in fact, it was established in 1997 as the result of a recommendation in a decision of the former Procurement Review Board of Canada in LANs PLUS Inc.[12]

In addition, the Department submitted that MERX is widely known among suppliers and publicized as the medium through which the Department's procurement opportunities are advertised, whether or not covered by the trade agreements. The Department submitted that it is the responsibility of suppliers to access this information which is readily available free of charge on the Internet.

Concerning the application of the provisions of subsections 6(3) and (4) of the Regulations to this case, the Department submitted that, considering NAC's knowledge of and experience in the type of procurement in dispute, it could reasonably be expected to have filed its complaint within 10 working days after October 14, 1998 (the last date of publication of the ACAN) or at least within 10 working days after February 10, 1999, when NAC claims it actually discovered the basis for the complaint.

In response, NAC submitted that the complaint does concern an aspect of the procurement process of a systemic nature and that, therefore, the 30-day period for filing the complaint can, if needed, be considered.

Concerning the recent advent of ACANs, NAC clarified that its assertion was to point out that these contracts have been let since the 1960s and that, prior to 1997, ACANs were not published for them. Furthermore, the ACAN in question was not published in *Government Business Opportunities*, as required by paragraph 5.041 of the Supply Manual.

---

12. Board File No. D89PRF6608-021-0006, *Determination by the Board*, January 18, 1990.

Finally, NAC submitted that to dismiss the complaint at this stage on the grounds that it is out of time would only artificially postpone the true nature of the complaint.

TRIBUNAL'S ANALYSIS

Subsection 30.11(1) of the CITT Act provides:

> Subject 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 and request the Tribunal to conduct an inquiry into the complaint.

Section 30.1 of the CITT Act reads, in part:

> "designated contract" means 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:

> For the purposes of the definition "designated contract" in section 30.1 of the [CITT] 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 . . . or in Article I of the Agreement on Government Procurement, by a government institution, is a designated contract.

Article 1001 of NAFTA, "Scope and Coverage," provides, in part, that Chapter Ten, "Government Procurement," applies to measures adopted or maintained by a Party relating to procurement by a federal government entity set out in Annex 1001.1a-1, of services in accordance with Annex 1001.1b-2, where the value of the contract to be awarded is estimated to be equal to or greater than certain monetary thresholds. Annex 1001.1b-2, "Services," further provides, in part, that Chapter Ten applies to all services that are procured by the entities which are listed in Annex 1001.1a-1 subject, among other things, to Section B.

Article I of the AGP, "Scope and Coverage," provides that the agreement applies to any procurement by entities covered by the agreement, as specified in Appendix I. In a footnote to Article I, it is indicated that, for each Party, Appendix I is divided into five annexes, including Annex 4, which specifies the services, whether listed positively or negatively, which are covered by the agreement. Annex I also provides a list of the government entities which are covered by the agreement, as well as the applicable monetary thresholds.

The Tribunal notes that, for purposes of the definition of "designated contract," DND is the government institution. As well, the estimated value of the subject procurement is above the applicable monetary thresholds in NAFTA and the AGP. These points are not in dispute. The question that the Tribunal must answer, in this case, is whether the contract at issue is a "designated contract" under NAFTA and/or the AGP and, therefore, whether it is subject to the bid challenge procedures in the applicable trade agreements.

The parties agree that the procurement at issue is substantially a service contract.[13] NAC submitted that a component of the procurement, namely, the spare parts component, might be better described as a

13. See para. 34 of NAC's complaint.

contract for goods; however, in its complaint, it submitted that the contracts at issue are service contracts.[14] Article 1001(3) of NAFTA and paragraph 5 of the General Notes to Appendix 1 for Canada of the AGP both provide that, "[w]here a contract to be awarded by an entity is not covered by this Agreement, this Agreement shall not be construed to cover any good or service component of that contract." On the basis of those provisions, notwithstanding the fact that there is a "good component" to this contract, the Tribunal determines that its decision relative to the service contract also applies to any of its component parts.

Section B, "Excluded Coverage," of Annex 1001.1b-2 of NAFTA, provides that a number of service contracts are excluded. One of the specifically listed exclusions under service group "J," "Maintenance, Repair, Modification, Rebuilding and Installation of Equipment," is "Services with reference to transportation equipment."

Canada's Annex 4 describes Canada's commitment with respect to the procurement of services. The UN CPC system is used to specifically identify those services which are covered by the agreement. Among other things, Annex 4 includes classes 8861 to 8864 and 8866, "Repair services incidental to metal products, machinery and equipment."[15] Class 8868, which is not included in Annex 4, is the only classification which provides for repair services of transportation equipment other than motor vehicles, trailers and semi-trailers (subclass 88670) on a fee or contract basis. Annex 4 provides that, domestically, Canada will use the CCS for purposes of implementing the agreement.

NAC submitted that the repair and maintenance of engines does not necessarily amount to the repair and maintenance of transportation equipment. According to the classification systems used under NAFTA and the AGP, NAC submitted that engines could be viewed more generically as power-generating equipment usable in both stationary and transportation applications. The Tribunal does not dispute this theoretical argument. However, in this instance, it is clear that the intended application is of the transportation type. In a letter from the Department to NAC dated September 27, 1995,[16] the Department indicated that the T56 Aero engines are installed in the Canadian Forces CP-140 maritime patrol aircraft and CC-130 Hercules transport aircraft. In a letter from NAC to the Office of the United States Trade Representative dated March 15, 1996,[17] NAC indicated, at paragraph 5, that the "Allison turbine engines . . . are contained in helicopters and airplanes used for border patrol, surveillance and military purposes." Furthermore, there is no evidence on the record that would suggest that the engines referred to in the solicitation at issue are intended for stationary applications. In the Tribunal's opinion, these facts clearly establish that the engines to be maintained and repaired are engines intended to be used on aircraft.

NAC argued that the ordinary meaning of "transportation equipment" is equipment used for the purposes of moving passengers and/or property. It submitted that the engines at issue are not "transportation equipment," in that they are used for border patrol, surveillance and military purposes. The Tribunal cannot accept this argument. In the simplest terms, "transportation" means to move persons or things from one place to another. In the Tribunal's view, the purpose for which those persons or things are moved, whether of a civilian or military nature, does not alter the basic fact of transportation. Furthermore, in the Tribunal's

14. *Ibid.*
15. CPC Division 88 provides the complete classification system for repair and maintenance services. Group 886, "Repair services incidental to metal products, machinery and equipment," includes nine four-digit classes, 8861 to 8868 and 8870.
16. Tab 2 of NAC's complaint.
17. Tab 3 of NAC's complaint.

view, the fact that NAFTA uses the words “Services with reference to transportation equipment” makes it clear that, to fall within the exclusion, the services need not be on the transportation equipment itself (in this instance, the aircraft), but may be in respect of something which forms part of that equipment. On the basis of the evidence that the engines at issue are to be used on military aircraft, the Tribunal is of the view that the contract at issue is for services with reference to transportation equipment and that the contract is, therefore, excluded from coverage under Chapter Ten of NAFTA.

With respect to the AGP, the Tribunal is of the view that the procurement is for repair and maintenance services, a category of services properly classified in service group “J” of the CCS and under class 8868 of the CPC system, and that it is, therefore, not included in the coverage under the AGP.

In view of the foregoing, the contract at issue is not a designated contract within the meaning of the CITT Act, and the Tribunal does not have jurisdiction to continue its inquiry in the matter. Consequently, the complaint is dismissed.

Pierre Gosselin
Pierre Gosselin
Member