



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DECISION AND REASONS

File No. PR-2011-050

Israel Military Industries Ltd.

*Decision made
Friday, February 10, 2012*

*Decision issued
Monday, February 13, 2012*

*Reasons issued
Thursday, February 23, 2012*

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

BY

ISRAEL MILITARY INDUSTRIES LTD.

AGAINST

THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT SERVICES

DECISION

Pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*, the Canadian International Trade Tribunal has decided not to conduct an inquiry into the complaint.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued at a later date.

STATEMENT OF REASONS

1. Subsection 30.11(1) of the *Canadian International Trade Tribunal Act*¹ provides that, subject to the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,² a potential supplier may file a complaint with the Canadian International Trade Tribunal (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. Subsection 30.13(1) of the *CITT Act* provides that, subject to the *Regulations*, after the Tribunal determines that a complaint complies with subsection 30.11(2) of the *CITT Act*, it shall decide whether to conduct an inquiry into the complaint.

2. The complaint relates to a procurement by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of National Defence (DND) for the supply of 120 mm ammunition.

3. Israel Military Industries Ltd. (IMI) alleged that PWGSC erred in determining that its proposals were not compliant with the mandatory requirements of the solicitation, erred in failing to consider documentation demonstrating compliance, and selected proposals that were not compliant with a mandatory requirement of the solicitation.

4. As indicated above, subsection 30.11(1) of the *CITT Act* provides 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 and request the Tribunal to conduct an inquiry into the complaint.”

5. 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”.

6. For the purposes of this definition of “designated contract”, the *Regulations* designate any contract or class of contract concerning a procurement of goods or services or any combination of goods or services by a government institution, as described in Article 1001 of the *North American Free Trade Agreement*,³ Article 502 of the *Agreement on Internal Trade*,⁴ Article I of the *Agreement on Government Procurement*,⁵ Article Kbis-01 of the *Canada-Chile Free Trade Agreement*,⁶ Article 1401 of the *Canada-Peru Free Trade Agreement*⁷ or Article 1401 of the *Canada-Colombia Free Trade Agreement*.⁸

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

2. S.O.R./93-602 [*Regulations*].

3. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [*NAFTA*].

4. 18 July 1994, C. Gaz. 1995.I.1323, online: Internal Trade Secretariat <http://www.ait-aci.ca/index_en/ait.htm> [*AIT*].

5. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*AGP*].

6. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 1997 Can. T.S. No. 50 (entered into force 5 July 1997) [*CCFTA*]. Chapter Kbis, titled “Government Procurement”, came into effect on September 5, 2008.

7. *Free Trade Agreement between Canada and the Republic of Peru*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/peru-perou/chapter-chapitre-14.aspx>> (entered into force 1 August 2009) [*CPFTA*].

8. *Free Trade Agreement between Canada and the Republic of Colombia*, online: Department of Foreign Affairs and International Trade <<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/colombia-colombie/anc-colombia-toc-tdm-can-colombie.aspx>> (entered into force 15 August 2011) [*CCOFTA*].

7. There is no indication that IMI is a “Canadian supplier” within the meaning of that term in Article 518 of the *AIT*,⁹ nor is there any indication that IMI is an enterprise constituted or organized under the laws of the United States, Mexico, Chile, Peru or Colombia or that there is otherwise a basis to apply *NAFTA*, the *CCFTA*, the *CPFTA* or the *CCOFTA* to this procurement. Rather, the complaint identifies IMI’s business address as 64 Bialik Boulevard, Ramat Hasharon, Israel. Israel is a party to the *AGP*. Indeed, IMI only claims that the procurement has not been carried out in accordance with the *AGP*.

8. Annex 1 to Canada’s Appendix 1 to the *AGP* lists the goods purchased by DND that are included in the coverage of the *AGP*. This list does not include tank ammunition, which is classified in Group 13, Ammunitions and Explosives, of the Federal Supply Classification Codes.¹⁰ Thus, the *AGP* does not apply to this procurement either.

9. Therefore, the procurement is not in respect of a “designated contract” and the Tribunal does not have jurisdiction to entertain IMI’s complaint.

DECISION

10. Pursuant to subsection 30.13(1) of the *CITT Act*, the Tribunal has decided not to conduct an inquiry into the complaint.

Stephen A. Leach

Stephen A. Leach
Presiding Member

9. See also *Northrop Grumman Overseas Services Corp. v. Canada (Attorney General)*, 2009 SCC 50, [2009] 3 S.C.R. 309.

10. This group of products, when purchased by DND, is also not covered by *NAFTA*, the *CCFTA*, the *CPFTA* or the *CCOFTA*.