



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

ORDER AND REASONS

File No. PR-2006-003

Alliance agricole internationale,
made up of the Centre canadien
d'étude et de coopération
internationale, the Société de
coopération pour le développement
international and L'Union des
producteurs agricoles—
Développement international

v.

Canadian International
Development Agency

*Order and reasons issued
Monday, November 27, 2006*

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IN THE MATTER OF a complaint filed by the Alliance agricole internationale, made up of the Centre canadien d'étude et de coopération internationale, the Société de coopération pour le développement international and L'Union des producteurs agricoles—Développement international, under subsection 30.11(1) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985 (4th Supp.), c. 47;

AND FURTHER TO the Canadian International Trade Tribunal's preliminary indication of the level of complexity of the complaint and the amount of the cost award.

BETWEEN

**THE ALLIANCE AGRICOLE INTERNATIONALE, MADE UP OF
THE CENTRE CANADIEN D'ÉTUDE ET DE COOPÉRATION
INTERNATIONALE, THE SOCIÉTÉ DE COOPÉRATION POUR
LE DÉVELOPPEMENT INTERNATIONAL AND L'UNION DES
PRODUCTEURS AGRICOLES—DÉVELOPPEMENT
INTERNATIONAL**

Complainant

AND

THE CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

**Government
Institution**

ORDER

In its order of August 21, 2006, the Canadian International Trade Tribunal, pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, awarded the Canadian International Development Agency its reasonable costs incurred in responding to the complaint. The Canadian International Trade Tribunal's preliminary indication of the level of complexity of this complaint was between Levels 1 and 2, as contemplated in the *Guideline for Fixing Costs in Procurement Complaint Proceedings*, and its preliminary indication of the amount of the cost award was \$1,700.

The Canadian International Trade Tribunal hereby confirms its preliminary indication by awarding the Canadian International Development Agency costs in the amount of \$1,700 for responding to the complaint and directs the Alliance agricole internationale, made up of the Centre canadien d'étude et de coopération internationale, the Société de coopération pour le développement international and L'Union des producteurs agricoles—Développement international, to take appropriate action to ensure prompt payment.

Meriel V. M. Bradford
Meriel V. M. Bradford
Presiding Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
Hélène Nadeau
Secretary

STATEMENT OF REASONS

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal) issued an order on August 21, 2006, giving its preliminary indication of the level of complexity of the complaint and awarding the Canadian International Development Agency (CIDA) its reasonable costs incurred in responding to the complaint. On September 5, 2006, the Tribunal received submissions from the Alliance agricole internationale, made up of the Centre canadien d'étude et de coopération internationale, the Société de coopération pour le développement international and L'Union des producteurs agricoles—Développement international (collectively the Alliance). On September 11, 2006, CIDA responded to those submissions. The Tribunal reviewed the submissions made by the parties and determined that its initial assessment of the level of complexity of the complaint, namely, between Levels 1 and 2, was appropriate.

POSITIONS OF THE PARTIES

The Alliance's Position

2. The Alliance first submitted that the order dismissing the complaint issued on August 21, 2006, should not have included taxable costs to be paid.

3. The Alliance submitted that the Tribunal's decision to classify the procurement in question as moderately complex was not justified because, by ruling purely on a jurisdictional issue, the Tribunal had no need to deal with the nature or substance of the services provided under the procurement.

4. The Alliance further submitted that the Tribunal's decision to classify the complexity of the complaint as low was not justified because the Tribunal had already accepted the complaint, which, according to the Tribunal, met the conditions set out in subsection 7(1) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*.¹

5. As to the complexity of the complaint proceedings, the Alliance submitted that the mere presence of an intervener in the case should not in itself have given rise to the classification of moderately complex. The Alliance submitted that, if CIDA had, at the beginning of the proceedings, exercised its option to file a motion on the issue of the Tribunal's lack of jurisdiction, SNC-Lavalin Inc. would, in all probability, not have intervened in the case.

CIDA's Position

6. CIDA claimed that the Alliance could not ask the Tribunal to cancel the cost award and could only submit comments on the determination of the level of complexity of the complaint or the amount of the cost award.

7. Regarding the level of complexity of the overall complaint, CIDA submitted that it must be Level 2 because the level of complexity of the three evaluation criteria was moderate. It therefore submitted that the costs awarded to CIDA must be \$2,400.

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

8. CIDA submitted that, even though the complaint had been dismissed on a jurisdictional issue, the Tribunal had to assess the level of complexity of the procurement independently of the reasons for the decision.

9. As to the level of complexity of the complaint, CIDA submitted that it was moderately complex because, even if the complaint could be decided on the basis of a single issue, the complaint also raised several other complex issues that CIDA had to address in its analysis of the complaint and in its response.

10. Finally, CIDA submitted that the Tribunal had erred in finding that it should have filed a preliminary motion. Given the time available to analyze the case, CIDA argued that it had correctly determined that it would be more efficient to develop its arguments not only on the two jurisdictional issues but also on the substance of the report.

ANALYSIS

11. First, the Tribunal notes that, at this stage, its analysis of the costs must be limited to fixing the amount because the costs were already awarded in the order issued on August 21, 2006.

12. The Tribunal has carefully reviewed all the submissions made by the parties and agrees with some of them.

Complexity of the Procurement

13. With respect to the complexity of the procurement, although CIDA submits that the Tribunal should have assessed the complexity level of the procurement independently of the reasons for the decision, the Tribunal agrees with the Alliance that the level of complexity of the procurement is less relevant because the Tribunal did not necessarily need to deal with the nature or substance of the services provided. The Tribunal notes that this point supports a reduction of the costs.

Complexity of the Complaint

14. As to the complexity of the complaint, the Tribunal does not accept the Alliance's position because, despite its initial decision to accept the complaint filed under subsection 7(1) of the *Regulations*, the Tribunal had to take its analysis further and weigh all the new arguments and evidence submitted by the parties in the Government Institution Report and in the response before it could decide the case. Thus, the Tribunal finds reasonable CIDA's approach that, even though the complaint could be settled exclusively on a jurisdictional issue, several other related issues had to be dealt with in its analysis of the complaint and in its response. The Tribunal notes that this finding supports an increase in costs.

Complexity of the Proceedings

15. With respect to the complexity of the proceedings, the Tribunal confirms its preliminary indication that the complaint is moderately complex.

16. Although the Tribunal agrees with CIDA that, given the complexity of the issues in this case, including one that was very complex and had to be dealt with in extensive representations, it was reasonable for all of the arguments to be included as part of the same submission, the Tribunal notes the Alliance's argument that the presence of the intervener could have been avoided if CIDA had filed a motion.

DETERMINATION

17. In light of the foregoing, the Tribunal finds that the parties' arguments with respect to fixing costs are of equal weight. Thus, it finds that its initial assessment of the level of complexity of the complaint, namely, between Levels 1 and 2, is appropriate. The Tribunal hereby confirms its preliminary indication by awarding CIDA costs in the amount of \$1,700 for responding to the complaint and directs the Alliance to take appropriate action to ensure prompt payment.

Meriel V. M. Bradford

Meriel V. M. Bradford
Presiding Member

Ellen Fry

Ellen Fry
Member