



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Procurement

DETERMINATION AND REASONS

File No. PR-2021-007

Wärtsilä Canada Incorporated

v.

Department of Public Works and
Government Services

*Determination issued
Tuesday, August 3, 2021*

*Reasons issued
Monday, August 16, 2021*

*Corrigendum issued
Wednesday, November 3, 2021*

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

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

BETWEEN

WÄRTSILÄ CANADA INCORPORATED

Complainant

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

DETERMINATION

Pursuant to paragraph 10(a) of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*, the Canadian International Trade Tribunal hereby dismisses the complaint, ceases its inquiry and terminates all proceedings related thereto.

Pursuant to section 30.16 of the *Canadian International Trade Tribunal Act*, the Tribunal awards the Department of Public Works and Government Services its reasonable costs incurred in responding to the complaint, which costs are to be paid by Wärtsilä Canada Incorporated. In accordance with the *Procurement Costs Guideline*, the Tribunal's preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. Any party that disagrees with the preliminary level of complexity or the preliminary indication of the cost award is invited to make submissions to the Tribunal within 15 days of the issuance of the Tribunal's Statement of Reasons. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

The intervener, Madsen Power Systems Inc., shall bear its own costs.

Frédéric Seppey

Frédéric Seppey
Presiding Member

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

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

AND FURTHER TO a decision to conduct an inquiry into the complaint pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.

BETWEEN

WÄRTSILÄ CANADA INCORPORATED

Complainant

AND

**THE DEPARTMENT OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

**Government
Institution**

CORRIGENDUM

The last sentence of paragraph 55 of the Statement of Reasons should read as follows:

Therefore, where the Tribunal determines at any time on the basis of the evidence and arguments before it that a complainant does not meet the statutory definition of “potential supplier”, the Tribunal is required, as a matter of law, to dismiss the complaint for lack of jurisdiction.

Frédéric Seppey

Frédéric Seppey
Presiding Member

Tribunal Panel:	Frédéric Seppey, Presiding Member
Tribunal Counsel:	Sarah Shinder, Counsel
Complainant:	Wärtsilä Canada Incorporated
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Government Institution:	Department of Public Works and Government Services
Counsel for the Government Institution:	Peter J. Osborne Margaret Robbins
Intervener:	Madsen Power Systems Inc.
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STATEMENT OF REASONS

OVERVIEW

[1] The complaint concerns a procurement (Solicitation No. F6855-210015/A) by the Department of Public Works and Government Services (PWGSC) on behalf of the Department of Fisheries and Oceans (DFO). The Request for Proposals (RFP) is for the provision of engine parts for the CCGS Cygnus and CCGS Cape Roger vessels for the Canadian Coast Guard (CCG).

[2] The complainant, Wärtsilä Canada Incorporated (Wärtsilä Canada), alleges that the winning bidder, Madsen Power Systems Inc. (Madsen), does not satisfy the requirements of the RFP as it is not an Original Equipment Manufacturer (OEM) of Nohab engines. Wärtsilä Canada also takes issue with the terms of the RFP.

[3] Wärtsilä Canada seeks that a new solicitation for the designated contract be issued, that the designated contract be terminated and that it be awarded the designated contract.

[4] On May 4, 2021, Wärtsilä Canada filed the present complaint.

[5] On May 11, 2021, the Tribunal accepted the complaint for inquiry pursuant to subsection 30.13(1) of the *Canadian International Trade Tribunal Act*.¹

[6] On May 28, 2021, Madsen was granted leave to intervene, after the Tribunal gave due consideration to relevant factors.

[7] For the reasons below, the Tribunal ceases its inquiry into the complaint, having determined that Wärtsilä Canada does not have standing to bring a complaint before the Tribunal.

PROCUREMENT PROCESS

[8] On March 15, 2021,² PWGSC published the RFP on Buyandsell.gc.ca, the government's official electronic tendering website. The RFP was subject to one amendment. The bid closing date was April 6, 2021.

[9] The procurement was solely for parts and components for the main engines on both the CCGS Cygnus and CCGS Cape Roger (the vessels). Bidders were required to submit electronic bids and include a technical bid, a financial bid and certifications.

[10] Of particular relevance to the present complaint is the Statement of Requirement to the RFP (Annex A), which provided as follows:

All parts must be supplied by an authorized OEM Representative of either British Polar Engines or Nohab. Prior to contract award, proof must be provided that shows successful bidder is authorized to supply OEM Parts in Canada.

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

² The date of March 15, 2021, appears on the Tender notice published on the web; see Exhibit PR-2021-007-01 at 60. The RFP itself was issued on March 12, 2021; see Exhibit PR-2021-007-07 at 1. Nothing turns on this apparent three-day discrepancy.

[11] The Statement of Requirement listed the engines of the vessels as follows:

CCGS Cygnus

Polar Nohab F212V

Serial Numbers 3111 and 3112

CCGS Cape Roger

Polar Nohab F212C

Serial Numbers 2704 and 2705

[12] Wärtsilä Canada did not submit a proposal in response to the solicitation.

[13] On April 20, 2021, the contract was awarded to Madsen.³

[14] On April 30, 2021, Wärtsilä Canada wrote to PWGSC to protest the contract award to Madsen, on the basis that Madsen did not comply with Annex A to the RFP.⁴

[15] On May 6, 2021, PWGSC responded to Wärtsilä Canada and advised that “[a]s required in the solicitation documents, the successful supplier has provided sufficient certification to fully meet the technical requirements and the contract will stand as awarded.”⁵

POSITION OF THE PARTIES

Wärtsilä Canada

Compliance with the trade agreements

[16] Wärtsilä Canada alleges that the procurement at issue was not conducted in accordance with Article 515(4) of the Canadian Free Trade Agreement (CFTA) because the contract was awarded to a non-compliant bidder.⁶ The crux of Wärtsilä Canada’s argument is that it is the only legal OEM supplier of the Nohab engines of the vessels covered by the RFP.⁷ Accordingly, in Wärtsilä Canada’s view, it is the only supplier capable of meeting the requirement of being an OEM parts supplier for the purposes of Annex A to the RFP.

[17] First, Wärtsilä Canada takes issue with PWGSC’s qualification of the engines of the vessels. Wärtsilä Canada contends that the engines should have been properly qualified as Nohab engines, rather than Polar Nohab engines. It further contends that PWGSC deliberately included language in the RFP based on wrong understandings and assumptions about the Nohab engines.⁸ Wärtsilä Canada

³ The date of April 20, 2021, appears on the contract award notice; see Exhibit PR-2021-007-01 at 63. PWGSC alleges that the contract was awarded on April 21, 2021; see Exhibit PR-2021-007-13 at 3. Nothing turns on this apparent one-day discrepancy.

⁴ Exhibit PR-2021-007-01 at 93-94.

⁵ Exhibit PR-2021-007-01.A at 2.

⁶ Exhibit PR-2021-007-01 at 13.

⁷ Exhibit PR-2021-007-01 at 12.

⁸ Exhibit PR-2021-007-01 at 14.

takes issue with PWGSC's including the requirement. Wärtsilä Canada also takes issue with PWGSC's position that OEM parts are meant to capture aftermarket parts.⁹

[18] Second, Wärtsilä Canada submits that only it qualifies as the OEM representative for the engines of the vessels. Wärtsilä Canada argues that it is the only supplier to hold the relevant intellectual property rights as a subsidiary of the sole shareholder of Nohab. Similarly, it alleges that British Polar Engines Limited (BPE) cannot certify any entity as an OEM for Nohab engines. As such, Wärtsilä Canada takes the position that Madsen could not comply with Annex A to the RFP without retaining its services, which it has not done.¹⁰

Standing

[19] Wärtsilä Canada argues that it is a potential supplier to the RFP because it is the certified OEM globally for the Nohab engines of the vessels. It contends that it could have submitted a proposal if it had been informed of the RFP by PWGSC.

[20] Moreover, Wärtsilä Canada contends that it had (and still has) the technical and financial capability of fulfilling the requirements of the RFP as it holds National Standing Offer F7044-1 90204 with PWGSC/CCG for the supply of OEM parts including Nohab (National Standing Offer).

[21] Wärtsilä Canada further argues that it has a clear legal right to ensure that its intellectual property is recognized, protected and enforced, that it has a genuine interest as a corporate citizen to ensure that procurement process are conducted in a fair and legal manner, and that there is a public interest concern that allowing such work to be carried by what it alleges to be a non-OEM representative creates a risk for public safety.¹¹

Timeliness

[22] Wärtsilä Canada submits that its complaint is timely, having been filed within 10 working days of Wärtsilä Canada learning of the award of the contract to Madsen.¹²

PWGSC

Compliance with the trade agreements

[23] PWGSC contends that the procurement was conducted in a fair and fully transparent manner, in accordance with its obligations under the trade agreements and the provisions of the RFP.¹³ It argues that Madsen's bid was clearly compliant with the technical requirements of the RFP, as it provided documentation confirming that it was an OEM representative of BPE, one of the two possible OEM designations that met the requirements of the RFP.¹⁴

⁹ Exhibit PR-2021-007-17 at 17.

¹⁰ Exhibit PR-2021-007-01 at 4, 12.

¹¹ Exhibit PR-2021-007-01 at 13.

¹² Exhibit PR-2021-007-01 at 15.

¹³ Exhibit PR-2021-007-13 at 15.

¹⁴ Exhibit PR-2021-007-13 at 14.

[24] PWGSC also argues that the RFP met all statutory requirements, as it was published on Buyandsell.gc.ca for more than 21 days. PWGSC states that no potential suppliers were given any advantage or provided advance notice of the RFP or alerted once the RFP had been published.¹⁵

Standing

[25] PWGSC further argues that Wärtsilä Canada does not have standing to bring this complaint. PWGSC states that Wärtsilä Canada did not submit a bid in response to the solicitation. As such, PWGSC takes the position that Wärtsilä Canada is not a “bidder” or “prospective bidder” within the meaning of section 30.11 of the *CITT Act* as clarified by the Tribunal’s jurisprudence, because at the time it filed its complaint, Wärtsilä Canada no longer had the capacity to submit a proposal. PWGSC further argues that providing a notice to Wärtsilä Canada individually would have been improper.¹⁶

[26] In response to Wärtsilä Canada’s argument relating to the National Standing Offer, PWGSC submits that the RFP was the appropriate manner of procurement in this case. PWGSC further argues that Wärtsilä Canada cannot rely on the National Standing Offer.

Timeliness

[27] Finally, PWGSC argues that Wärtsilä Canada’s ground of complaint regarding whether the issuance of the RFP was appropriate because of the existence of the National Standing Offer is time-barred.¹⁷

Madsen

Compliance with the trade agreements

[28] Madsen takes the position that this matter is first and foremost a commercial dispute between Wärtsilä Canada and BPE; a dispute lasting over 40 years.¹⁸

[29] Madsen takes the position that it complied with the requirements of the RFP. It argues that it submitted the requisite proof to satisfy that it is an authorized representative of BPE.¹⁹

[30] Madsen takes issue with Wärtsilä Canada’s contention that it is the sole entity to qualify as an OEM representative. It argues that assertions by Wärtsilä Canada in relation to intellectual property rights may be false and/or misleading, depending upon which rights Wärtsilä Canada is actually asserting. It further argues that there is no intellectual property right in the designation or use of the term “OEM”.²⁰

¹⁵ Exhibit PR-2021-007-13 at 9.

¹⁶ Exhibit PR-2021-007-13 at 10.

¹⁷ Exhibit PR-2021-007-13 at 10.

¹⁸ Exhibit PR-2021-007-15 at 1.

¹⁹ Exhibit PR-2021-007-15 at 2.

²⁰ Exhibit PR-2021-007-15 at 2-4.

Standing and timeliness

[31] Madsen takes the position that Wärtsilä Canada does not have standing and that the complaint is time-barred. Madsen raises similar arguments to those of PWGSC with respect to the same issues.²¹

ANALYSIS

Preliminary issue: does Wärtsilä Canada have standing?

[32] Standing before the Tribunal is governed by subsection 30.11(1) of the *CITT Act*, which provides that “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.”

[33] A “potential supplier” is defined in section 30.1 of the *CITT Act* as “a bidder or prospective bidder on a designated contract.”

[34] The Tribunal has previously found that a plain and ordinary reading of the definition of “potential supplier” in section 30.11 of the *CITT Act* requires that the phrase “a bidder or prospective bidder” not be read in isolation, but rather in reference to a particular “designated contract”.²²

[35] Section 30.1 of the *CITT Act* defines a “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.”

[36] The Tribunal has previously interpreted a “bidder” to be a party who has actually submitted a bid for the procurement at issue.²³ It is uncontested that Wärtsilä Canada has not submitted a bid in response to the solicitation. As such, Wärtsilä Canada cannot be considered a bidder for the purposes of 30.11(1) of the *CITT Act*.

[37] However, standing is not limited to bidders. Section 30.1 and subsection 30.11(1) of the *CITT Act*, as set out above, expressly contemplate that the Tribunal has jurisdiction to hear complaints filed by prospective bidders.

²¹ Exhibit PR-2021-007-15 at 4.

²² *Flag Connection Inc. v. Department of Public Works and Government Services* (3 September 2009), PR-2009-026 (CITT) [*Flag*] at para. 17.

²³ See, for example, *J. Plummer-Grolway* (10 March 2015), PR-2014-065 (CITT) at para. 15; *Alion Science and Technology Corporation and Alion Science and Technology Canada Corporation* (30 January 2019), PR-2018-043 (CITT) [*Alion*] at para. 41; *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* (21 August 2006), PR-2006-003 (CITT) at para. 28.

[38] The Tribunal has held that the two following conditions must be met in order for a supplier to be considered a prospective bidder in relation to a particular designated contract. To be considered a prospective bidder, a complainant must:

- (a) have the financial and technical capability of fulfilling the procurement; and
- (b) have the capacity to submit a proposal for the procurement at issue²⁴, except where the complainant is effectively deprived of that capacity as a result of a breach of the trade agreements by the government institution in the procurement process.²⁵

[39] Wärtsilä Canada argues it had (and still has) the technical and financial capability of fulfilling the requirements of the RFP, as it holds National Standing Offer F7044-1 90204 with PWGSC/CCG for the supply of OEM parts including for Nohab engines (National Standing Offer). Wärtsilä Canada's financial and technical capability of fulfilling the procurement is not contested.

[40] However, it is also uncontested that Wärtsilä Canada did not submit a bid in response to the solicitation and that the bidding period for the designated contract had closed by the time it filed its complaint. As such, while Wärtsilä Canada theoretically had the capacity to submit a bid in response to the RFP at some point, it is clear that it no longer did at the time of filing this complaint. In addition, Wärtsilä Canada does not expressly argue that it was prevented from placing a bid because of an aspect of the procurement process that was objectionable under the applicable trade agreement.

[41] Wärtsilä Canada takes issue with the contents of a requirement of the RFP and the fact that PWGSC tendered the requirement in the first place.²⁶ Wärtsilä Canada also alleges that the winning bidder is non-compliant.

[42] The Tribunal fails to see how the nature of the impugned conduct prevented Wärtsilä Canada from placing a bid in response to the solicitation. Wärtsilä Canada does not argue that the scope of the requirement was overly restrictive or otherwise precluded it from placing a bid in response to the RFP. Not only does Wärtsilä Canada argue that it could have satisfied this requirement, it argues that it is the only potential supplier that could legally do so.

[43] The Tribunal also fails to see why the fact that the requirement was tendered using an open tendering process prevented Wärtsilä Canada from submitting a bid. As argued by PWGSC, the tender was posted on Buyandsell.gc.ca for a period of approximately three weeks. Wärtsilä Canada was or should have been familiar with the process of responding to tenders on Buyandsell.gc.ca, having submitted bids in response to prior solicitations. Buyandsell.gc.ca also contains a notification system which permits suppliers to elect to receive notifications about procurement processes that are of particular relevance to them. Irrespective, Wärtsilä Canada does not contend that it did not have access to Buyandsell.gc.ca at all material times.

²⁴ *Flag*, at para. 20.

²⁵ *Flag*, at para. 20, footnote 12. The Federal Court of Appeal has examined the concept of being effectively deprived of that capacity as a result of a breach of the trade agreements in the following two decisions: *Canada (Attorney General) v. Siemens Enterprise Communications Inc.*, 2011 FCA 251 [*Siemens*] at paras. 4-6; *Canada (Attorney General) v. Enterasys Networks of Canada Ltd.*, 2011 FCA 207 [*Enterasys*] at paras. 13-16.

²⁶ As noted below, given the Tribunal's conclusions on the issue of standing, the Tribunal will, for reasons of judicial economy, refrain from addressing the timeliness of these grounds of complaint.

[44] As indicated above, Wärtsilä Canada argues that had it been advised of the procurement process, it would have submitted a bid in response to the RFP. It argues that it should have received a notification from PWGSC because it is the only supplier capable of fulfilling the requirements at issue. Wärtsilä Canada also alleges that PWGSC should not have tendered the requirement at all, but instead, conducted a sole-source procurement to retain Wärtsilä Canada's services, as it has done in the past.

[45] Leaving aside the question of whether the trade agreements permitted PWGSC to conduct a sole-source procurement, in other words, use limited tendering, the fact is that PWGSC elected to satisfy this requirement with an open tendering process. To the extent that it did, it was required to tender the requirement in accordance with its obligations under the applicable trade agreements.

[46] Article 506 of the CFTA requires that procuring entities "publish a tender notice for each covered procurement on one of the tendering websites or systems designated by its Party." Article 509(7) of the CFTA states that a "procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders."²⁷

[47] There is no evidence on record to suggest that PWGSC did not comply with such obligations. As noted above, PWGSC posted the requirement on Canada's designated tendering website for approximately three weeks.²⁸ PWGSC also contends that it did not otherwise provide any advantage or advance notice to Wärtsilä Canada to bid on the solicitation, nor did it do so with other suppliers. PWGSC argues that doing so would have been improper. The Tribunal agrees.

[48] The question of whether a procuring entity can provide advance notice to one supplier where the trade agreements provide for open tendering processes was first examined by the Procurement Review Board of Canada (the predecessor tribunal to the Tribunal), in *Blowey-Henry (Wholesale) Ltd. v. Canada (Supply and Services)*.²⁹ This complaint involved allegations that the procuring entity had acted unfairly in failing to provide advance notice to the incumbent supplier that it would be retendering the requirement. The Board found that giving the incumbent special notice of a solicitation would amount to a violation of the Free Trade Agreement. The Board specifically found as follows:

... it would be inappropriate to give the complainant special notice of a solicitation because that would violate the requirements of Article 1305.2 of the Free Trade Agreement which requires that the government provide equal access to presolicitation information and an equal opportunity to compete. To provide special notice to one competitor, as this complainant wants, would be to treat the other competitors unequally, which would be improper.³⁰

[Underlining in original]

[49] While the articles relating to equal opportunity and fairness to bidders are drafted differently in the CFTA than they were under the Free Trade Agreement, there is nothing in the wording of the

²⁷ Section 520 of the CFTA defines supplier as follows: "supplier means a person or group of persons that provides or could provide goods or services."

²⁸ Exhibit PR-2021-007-01 at 60.

²⁹ 1990 CanLII 3977 (CA CITT) [*Blowey-Henry*].

³⁰ *Blowey-Henry* at 4-5.

CFTA that suggests that the duty of equal treatment is in any way less generous than what was required under the Free Trade Agreement.

[50] In any event, Article 503.5(g) of the CFTA specifically states that providing information to one supplier in order to give that supplier an advantage over other suppliers is not permitted under the CFTA.

[51] Accordingly, insofar as PWGSC conducted an open tendering process, it cannot be faulted for not providing a preferential invitation to bid to Wärtsilä Canada. In fact, had it done so, PWGSC could have been in direct contravention of its obligations under the applicable trade agreements.

[52] Further, in the Tribunal's view, the fact that Wärtsilä Canada holds the National Standing Offer has no bearing on its ability to submit a bid in response to the solicitation. In the Tribunal's view, Wärtsilä Canada has failed to establish how the existence of this National Standing Offer prevented it from monitoring Buyandsell.gc.ca and placing a bid in response to the solicitation. The Tribunal therefore finds that Wärtsilä Canada was not prevented from submitting a bid because it held the National Standing Offer.

[53] Lastly, in absence of any cogent argument as to why the alleged non-compliance of Madsen's bid would have precluded Wärtsilä Canada from placing a bid in response to the solicitation, the Tribunal finds that this purported breach of the trade agreements did not prevent Wärtsilä Canada from submitting a proposal.

[54] In response to PWGSC's and Madsen's arguments, Wärtsilä Canada also argued that the issue of whether it has standing to bring the present complaint is irretrievably "moot" on the basis that the Tribunal has commenced an inquiry. Wärtsilä Canada contends that pursuant to section 7 of the *Canadian International Trade Tribunal Procurement Inquiry Regulations*,³¹ the Tribunal was required to determine whether Wärtsilä Canada had standing prior to deciding to conduct an inquiry.

[55] The Tribunal disagrees with this argument. The Tribunal has previously held that an initial determination that the conditions for inquiry in subsection 7(1) of the *Regulations* have been met does not represent a final ruling on the question of whether a complainant is a "potential supplier".³² As well, the Tribunal is a statutory tribunal. Therefore, where the Tribunal codetermines at any time on the basis of the evidence and arguments before it that a complainant does not meet the statutory definition of "potential supplier", the Tribunal is required, as a matter of law, to dismiss the complaint for lack of jurisdiction.³³

[56] The arguments advanced by Wärtsilä Canada relating to its intellectual property rights, its genuine interest as a corporate citizen to ensure that procurement process are conducted in a fair and legal manner, and its public interest concerns related to public safety are not relevant to the Tribunal's determination of whether Wärtsilä Canada fits the statutorily defined definition of

³¹ SOR/93-602 [*Regulations*].

³² *Alion* at para. 6. In *Alion*, the Tribunal reasoned that "its initial ruling on these conditions is made for gatekeeping purposes, as it is only based on the evidence and arguments of one party (the complainant) rather than the full record. These conditions are subject to further review during an inquiry, on the basis of a complete record of evidence and submissions from the parties. Where the Tribunal determines that a particular condition has not been satisfied it will cease its inquiry pursuant to section 10 of the *Regulations*."

³³ *Siemens* at paras. 5, 6; *Enterasys* at para. 16.

“potential supplier” (i.e. whether it is a bidder or prospective bidder in relation to the designated contract).

[57] Wärtsilä Canada also argues that PWGSC’s “illegal conduct” cannot be shielded from public scrutiny for procedural reasons. Again, this argument cannot succeed. Access to a statutory tribunal is governed by the relevant legislation.³⁴ In any event, the Tribunal notes that its decision to cease this inquiry does not foreclose all avenues of recourse. To the extent that Wärtsilä Canada alleges that its intellectual property rights or other rights are infringed, it may have a recourse before the Courts.

[58] In light of the above, the Tribunal finds that Wärtsilä Canada has not been effectively deprived of its capacity to submit a bid as a result of a breach of the trade agreements. The Tribunal therefore finds that Wärtsilä Canada cannot be considered a bidder or prospective bidder in relation to this designated contract; therefore, it is not a potential supplier in respect of the designated contract that is the subject of this inquiry. Accordingly, Wärtsilä Canada does not have standing to file this complaint.

[59] Having so found, for purposes of judicial economy, the Tribunal does not find it necessary to address the issue of timeliness and the substantive merits of the grounds of complaints.

DETERMINATION

[60] Pursuant to paragraph 10(a) of the *Regulations*, the Tribunal hereby dismisses the complaint, ceases its inquiry and terminates all proceedings related thereto.

[61] Pursuant to section 30.16 of the *CITT Act*, the Tribunal awards PWGSC its reasonable costs incurred in responding to the complaint, which costs are to be paid by Wärtsilä Canada. In accordance with the *Procurement Costs Guideline*, the Tribunal’s preliminary indication of the level of complexity for this complaint is Level 1, and its preliminary indication of the amount of the cost award is \$1,150. Any party that disagrees with the preliminary level of complexity or the preliminary indication of the cost award is invited to make submissions to the Tribunal within 15 days of the issuance of the Tribunal’s Statement of Reasons. The Tribunal reserves jurisdiction to establish the final amount of the cost award.

[62] The intervener, Madsen Power Systems Inc., shall bear its own costs.

Frédéric Seppey
Frédéric Seppey
Presiding Member

³⁴ *Northrop Grumman Overseas Services Corp v. Canada (Attorney General)*, 2009 SCC 50, [2009] 3 S.C.R. 309 at para. 44.