



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2011-039

United Wood Frames Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Thursday, June 7, 2012*

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IN THE MATTER OF an appeal heard on May 23, 2012, pursuant to subsection 61(1) of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency, dated August 3, 2011, with respect to a request for re-determination pursuant to section 59 of the *Special Import Measures Act*.

BETWEEN

UNITED WOOD FRAMES INC.

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Diane Vincent
Diane Vincent
Member

Jason W. Downey
Jason W. Downey
Member

Gillian Burnett
Gillian Burnett
Acting Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: May 23, 2012

Tribunal Members: Serge Fréchette, Presiding Member
Diane Vincent, Member
Jason W. Downey, Member

Counsel for the Tribunal: Nick Covelli
Alexandra Pietrzak

Manager, Registrar Programs and Services: Michel Parent

Registrar Officer: Haley Raynor

PARTICIPANTS:**Appellant**

United Wood Frames Inc.

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Larry Saifer

Respondent

President of the Canada Border Services Agency

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STATEMENT OF REASONS

1. This is an appeal filed by United Wood Frames Inc. (United) pursuant to subsection 61(1) of the *Special Import Measures Act*¹ from a re-determination made by the President of the Canada Border Services Agency (CBSA) pursuant to section 59.

2. The appeal concerns mattress innerspring units, which United imported from the People's Republic of China. The goods are of the same description as the goods to which the Tribunal's finding in Inquiry No. NQ-2009-002² applies. Therefore, they are subject to anti-dumping duties.

3. The CBSA assessed anti-dumping duties on the basis of a normal value that is well in excess of the export price of the goods.³ The issue is whether the CBSA correctly determined the normal value.

PROCEDURAL HISTORY

4. United filed a brief on December 7, 2011.⁴ The CBSA filed its brief on February 2, 2012.⁵

5. As no material facts are in dispute, the parties consented to a hearing by way of written submissions.⁶

6. In lieu of an oral hearing, the Tribunal invited United to comment on the CBSA's brief by April 10, 2012.⁷ The Tribunal later extended this deadline to April 23, 2012.⁸

7. On April 20, 2012, United filed several documents (e.g. invoices, production schedules, production flowcharts), which appear to be in Chinese.⁹ United filed English translations on May 1, 2012.¹⁰ No accompanying explanation or argument was provided.

8. On May 3, 2012, the Tribunal offered the CBSA an opportunity to comment on United's additional materials. The CBSA filed comments on May 9, 2012.¹¹

9. The file hearing took place on May 23, 2012.

LAW

10. The onus is on United to show that the normal value is invalid or incorrect.¹²

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. *Mattress Innerspring Units* (24 November 2009) (CITT).

3. Tribunal Exhibit AP-2011-039-05A, tab 4.

4. Tribunal Exhibit AP-2011-039-03.

5. Tribunal Exhibit AP-2011-039-05A.

6. Tribunal Exhibits AP-2011-039-06 and AP-2011-039-10. See rule 36.1 of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499.

7. Tribunal Exhibit AP-2011-039-11.

8. Tribunal Exhibits AP-2011-039-12 and AP-2011-039-13.

9. Tribunal Exhibit AP-2011-039-15 (protected).

10. Tribunal Exhibit AP-2011-039-15A (protected).

11. Tribunal Exhibit AP-2011-039-17.

12. See *Sugi Canada Ltée v. Deputy M.N.R.C.E.* (17 December 1992), AP-92-013 (CITT) at 3.

11. Subsection 3(1) of *SIMA* requires that anti-dumping duties be levied in an amount equal to the “margin of dumping”. The phrase “margin of dumping” is defined under section 2 as “. . . the amount by which the normal value exceeds the export price of the goods”.

12. Sections 15 to 30 of *SIMA* prescribe the methods for determining the normal value and export price. Subsection 29(1) provides that where, “. . . in the opinion of the [CBSA], sufficient information has not been furnished or is not available to enable the determination of normal value or export price as provided in sections 15 to 28, the normal value or export price, as the case may be, shall be determined in such manner as the Minister [of Public Safety and Emergency Preparedness] specifies.”

ANALYSIS

13. According to the CBSA, neither the exporter of the goods in issue nor United nor anyone else, whether individually or cumulatively, submitted sufficient information to allow the CBSA to determine the normal value in accordance with any of the manners prescribed in sections 15 to 28 of *SIMA*.¹³

14. As a result, pursuant to subsection 29(1) of *SIMA*, the CBSA assessed the normal value of the goods in accordance with a ministerial specification. This ministerial specification required the normal value to be determined on the basis of the export price plus 147.4 percent.¹⁴

15. United does not take issue with these facts. United does not argue that the CBSA erred by either having recourse to a ministerial specification or by calculating the normal value. On the contrary, United admits that the CBSA had insufficient information at the time of its decision.¹⁵ This admission is enough to dismiss the appeal.¹⁶

16. United seems to want the Tribunal to re-assess the normal value on the basis of the materials that it filed in the course of this appeal. United states in its four-paragraph brief that it wishes to have the normal values based, in particular, on a one-page factory production schedule attached to the brief, which “. . . was not available . . .” earlier.¹⁷

17. However, even if the Tribunal could make such a re-assessment in this case, United has not shown how the schedule or the other material that it belatedly filed with the Tribunal is sufficient for determining the normal value in accordance with one of the manners prescribed in sections 15 to 28 of *SIMA*.

18. In fact, United has presented no argument whatsoever to support its claim. On the other hand, the CBSA maintains that these materials are insufficient.¹⁸ In the circumstances, the Tribunal has no reason to doubt that this is the case.

13. Tribunal Exhibit AP-2011-039-05A at paras. 6-15, 22.

14. *Ibid.*, tab 16.

15. As mentioned, United advised the Tribunal that it did not dispute any of the material facts stated in the CBSA’s brief. Tribunal Exhibit AP-2011-039-10.

16. The Tribunal recalls that, in *Massive Prints, Inc. v. President of the Canada Border Services Agency* (27 April 2011), AP-2010-014 (CITT), it dismissed the appeal under the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1, because the appellant in that case had not submitted the requisite information to the CBSA at the time of the CBSA’s re-determination.

17. Tribunal Exhibit AP-2011-039-03 at paras. 1, 4.

18. Tribunal Exhibit AP-2011-039-05A at para. 34; Tribunal Exhibit AP-2011-039-17.

19. Therefore, United has not satisfied the Tribunal that the normal value, as determined by the CBSA, is invalid or incorrect.

DECISION

20. The appeal is dismissed.

Serge Fréchette
Serge Fréchette
Presiding Member

Diane Vincent
Diane Vincent
Member

Jason W. Downey
Jason W. Downey
Member