



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

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## ORDER AND REASONS

Appeal No. AP-2009-009

Nicholson and Cates Limited

v.

President of the Canada Border  
Services Agency

*Order and reasons issued  
Tuesday, July 6, 2010*

**TABLE OF CONTENTS**

ORDER ..... i  
STATEMENT OF REASONS ..... 1

IN THE MATTER OF an appeal filed by Nicholson and Cates Limited on May 7, 2009, under subsection 67(1) of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a motion filed by Nicholson and Cates Limited on June 29, 2010, pursuant to rule 24 of the *Canadian International Trade Tribunal Rules*, for an order rescinding its notice of discontinuance.

**BETWEEN**

**NICHOLSON AND CATES LIMITED**

**Appellant**

**AND**

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

**Respondent**

**ORDER**

The motion is dismissed.

The Canadian International Trade Tribunal hereby confirms that the file in this appeal is closed as a result of the filing by Nicholson and Cates Limited of a notice of discontinuance pursuant to rule 44 of the *Canadian International Trade Tribunal Rules*.

André F. Scott

André F. Scott

Presiding Member

Dominique Laporte

Dominique Laporte

Secretary

## STATEMENT OF REASONS

1. On May 7, 2009, Nicholson and Cates Limited (Nicholson) filed an appeal with the Canadian International Trade Tribunal (the Tribunal) from a decision made by the President of the Canada Border Services Agency (CBSA), pursuant to subsection 60(4) of the *Customs Act*,<sup>1</sup> regarding the tariff classification of an imported material known as “Trex decking”.
2. On June 17, 2010, Nicholson filed a notice of discontinuance with the Tribunal pursuant to rule 44 of the *Canadian International Trade Tribunal Rules*.<sup>2</sup>
3. On June 17, 2010, the Tribunal acknowledged receipt of Nicholson’s notice of discontinuance and informed the parties that, as a result of Nicholson’s decision to discontinue this appeal, its file on this matter was closed.
4. On June 18, 2010, by way of an e-mail to the Tribunal, Nicholson requested to withdraw its previously filed notice of discontinuance and to continue the proceedings in this appeal.
5. On June 22, 2010, the CBSA requested that the Tribunal confirm that the file in this appeal was closed and submitted that, once a notice of discontinuance is filed, it is not possible for an appellant to “resurrect” its appeal.
6. On June 24, 2010, in view of the materials filed by the parties with respect to this matter, the Tribunal directed Nicholson to file a notice of motion and an affidavit pursuant to subrule 24(2) of the *Rules* concerning its request to withdraw its notice of discontinuance.
7. On June 29, 2010, Nicholson filed a motion pursuant to rule 24 of the *Rules* seeking an order rescinding its notice of discontinuance. Nicholson submitted that the notice of discontinuance was filed due to the financial considerations associated with carrying out this appeal to its conclusion and that, had it been aware prior to the filing of its notice of discontinuance of the possibility of a hearing by way of written submissions, which would have had the effect of limiting its costs, it would not have discontinued this appeal.
8. The Tribunal is unable to accept this argument. As a matter of law, the filing of a notice of discontinuance pursuant to rule 44 of the *Rules* normally terminates the proceedings before the Tribunal. It is only in the most exceptional circumstances that the Tribunal can decide to rescind a duly filed notice of discontinuance. These circumstances include the filing of a notice of discontinuance by unauthorized counsel or other situations in which it is demonstrated that a notice of discontinuance was clearly filed in error and did not reflect the intention of the appellant.<sup>3</sup>
9. However, such circumstances are not present in this appeal. A review of the reasons invoked by Nicholson to withdraw its notice of discontinuance reveals that, when it filed its notice, it was Nicholson’s intention to discontinue this appeal. Ignorance of the law or of ways to potentially reduce its costs in an appeal before the Tribunal is not a valid reason to withdraw a duly filed notice of discontinuance.

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1. R.S.C. 1985 (2d Supp.), c. 1.

2. S.O.R./91-499 [*Rules*].

3. *Noranda Forest Sales Inc. v. PCL European Service Ltd.* (1996), 107 F.T.R. 186 (Proth.).

10. For the foregoing reasons, the Tribunal dismisses Nicholson's motion and confirms that the file in this appeal is closed as a result of the filing by Nicholson of a notice of discontinuance pursuant to rule 44 of the *Rules*.

André F. Scott

André F. Scott  
Presiding Member