CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Friday, September 3, 1999

Appeal Nos. AP-95-225 and AP-95-227

IN THE MATTER OF a preliminary issue of jurisdiction in appeals filed under section 67 of the *Customs Act*, R.S.C. 1985 (2nd Supp.), c. 1;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue to refuse to entertain requests for re-determination of tariff classifications pursuant to subparagraph 64(*e*)(i) of the *Customs Act*.

BETWEEN

DIAMANT BOART TRUCO LTD. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeals are dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
Ottawa (Ontario) K1A 0G7
(613) 990-2452 Téléc. (613) 990-2439

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

UNOFFICIAL SUMMARY

Appeal Nos. AP-95-225 and AP-95-227

DIAMANT BOART TRUCO LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

During the period of 1988 through 1991, the appellant made several importations of goods that it described as saw blades and parts thereof, including segments, for use in stone-cutting machines. The appellant had requested re-determinations pursuant to subparagraph 64(*e*)(i) of the *Customs Act* after the Tribunal, in a previous appeal made by the appellant, determined in its favour that circular saw blades of agglomerated synthetic or natural diamond for use in stone-cutting machines should be classified under tariff item No. 6804.21.10.00 of the *Customs Tariff* as circular saw blades and parts thereof for use in stone-cutting machines. The appellant claims, in its requests for re-determination, that the goods in issue are similar to the goods in the previous decision and, consequently, that the respondent should re-determine the tariff classification of the goods that it imported subsequently to that appeal, as permitted by subparagraph 64(*e*)(i) of the *Customs Act*.

HELD: The appeals are dismissed. The facts of these appeals are essentially the same as those in *Vilico Optical* v. *Deputy Minister of National Revenue* and *Philips Electronics* v. *Deputy Minister of National Revenue*, that is, the respondent's refusals to entertain requests for re-determination under subparagraph 64(*e*)(i) of the *Customs Act*. After having carefully reviewed the relevant provisions of the *Customs Act* and the Tribunal's conclusions in these appeals, the Tribunal adopts the same reasoning as in *Vilico Optical* v. *Deputy Minister of National Revenue* that other actions taken in relation to section 63 or 64 of the *Customs Act*, such as refusals to consider the appellant's requests for re-determination, may be reviewable by the Federal Court of Canada, but not by the Tribunal.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	November 5, 1998
Date of Decision:	September 3, 1999
Tribunal:	Pierre Gosselin, Presiding Member
Counsel for the Tribunal:	Gilles B. Legault
Clerk of the Tribunal:	Anne Turcotte
Parties:	Richard R. Ducharme, for the appellant Kim Conboy, for the respondent

333 Laurier Avenue West
Ottawa, Ontario K1A 0G7
(613) 990-2452 Fax (613) 990-2439

333, avenue Laurier ouest
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Appeal Nos. AP-95-225 and AP-95-227

DIAMANT BOART TRUCO LTD. **Appellant**

and

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

TRIBUNAL: PIERRE GOSSELIN, Presiding Member

REASONS FOR DECISION

On July 27 and on November 1, 1995, the appellant filed two appeals with the Tribunal under section 67 of the *Customs Act*.[1] These appeals deal with decisions of the Deputy Minister purportedly made pursuant to subparagraph 64(*e*)(i) of the *Act*.

At the time of the appellant's appeals, the Tribunal was considering its jurisdiction under the *Act* to deal with certain types of appeals that raise similar questions of law. Consequently, the present appeals were put in abeyance until the Tribunal issued its decisions concerning jurisdiction. Those decisions were issued in May 1996 and December 1997 in *Vilico Optical* v. *Deputy Minister of National Revenue*[2] and in *Philips Electronics* v. *Deputy Minister of National Revenue*.[3]

Further to these decisions, the appellant advised the Tribunal that it wanted to proceed with its two appeals. Thus, on March 3, 1998, the Tribunal requested the parties to file submissions regarding its jurisdiction to hear and decide these appeals in view of the position taken in *Vilico* and *Philips*. The parties were also informed that, following the receipt of their submissions, the Tribunal would decide whether any further written submissions or oral representations were needed to decide the jurisdictional issue and that, if the Tribunal were to conclude that it has jurisdiction to hear the appeals, then these appeals would be scheduled to be heard on their merits. However, for the reasons below, the Tribunal is of the view that it does not have jurisdiction to deal with the present appeals.

Based on the documents on file, the facts leading to this matter are as follows. During the period of 1988 through 1991, the appellant made several importations of goods that it described as saw blades and parts thereof, including segments, for use in stone-cutting machines. The goods in issue were accounted for pursuant to section 32 of the *Act*. In the absence of a determination as to the tariff classification of these goods, such determinations were deemed to have been made under subsection 58(5) of the *Act*, 30 days after the accounting of the goods.

Subsequently, the appellant requested re-determinations pursuant to subparagraph 64(*e*)(i) of the *Act*. These requests were made further to and on the basis of the Tribunal's decision in *Diamant Boart Truco* v. *Deputy Minister of National Revenue for Customs and Excise*[4] which determined in favour of the appellant that circular saw blades of agglomerated synthetic or natural diamond for use in stone-cutting

1. R.S.C. 1985 (2nd Supp.) , c. 1 [hereinafter *Act*].
2. (May 7, 1996), AP-94-365 (C.I.T.T.) [hereinafter *Vilico*].
3. (December 18, 1997), AP-95-224 (C.I.T.T.) [hereinafter *Philips*].
4. (July 27, 1992) AP-90-166 (C.I.T.T.).

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(613) 990-2452 Téléc. (613) 990-2439

machines should be classified under tariff item No. 6804.21.10.00 of the *Customs Tariff*[5] as circular saw blades and parts thereof for use in stone-cutting machines. The appellant claims, in its requests for re-determination, that the goods in issue are similar to the goods in the previous decision and, consequently, that the respondent should re-determine the tariff classification of the goods that it imported subsequently to that appeal, as permitted by subparagraph 64(*e*)(i) of the *Act*.

However, responses were given to the appellant that the goods in issue, referred to as segments, are not similar to those that were the subject of the Tribunal's decision in the appellant's previous appeal. The response with respect to Appeal No. AP-95-227 came in the form of a letter dated April 25, 1995, from an officer of the Department of National Revenue (Revenue Canada), which letter stated that "there is no basis in law for a re-determination of the classification of segments under [paragraph] 64(*e*)". The responses with respect to Appeal No. AP-95-225 were provided on forms that are known as detailed adjustment statements (DAS), which stated that "no decision can be issued pursuant to section 64 of the [*Act*]" and that "this claim is cancelled". Those are the decisions that constitute the basis of the present appeals to the Tribunal.

In support of his view that the Tribunal has jurisdiction to deal with this matter, the appellant's representative essentially argued that it is obvious that Revenue Canada had to conduct an in-depth review of the matter in order to deny the appellant's requests for re-determination on the basis that the goods in issue are not "like goods". The representative also submitted, with respect to Appeal No. AP-95-225, that the letter from the Revenue Canada officer contradicts and violates paragraph 5 of Memorandum D11-6-3[6] which, among other things, states that:

> Importers need not protect appeal time limits formally or informally in order for their "subsequent goods" to be eligible for consideration under paragraph 64(*e*).

Counsel for the respondent, on the other hand, claimed that subsection 67(1) of the *Act* only grants a right of appeal to the Tribunal with respect to decisions made by the respondent under sections 63 and 64 of the *Act*. Since such decisions were never rendered in these appeals, counsel added that the Tribunal lacks the jurisdiction to hear these appeals. Counsel further argued that the facts in these appeals are virtually identical to those in *Vilico* and *Philips*, inasmuch as the respondent also refused to entertain the requests for re-determination and, consequently, as it decided herein, the Tribunal does not have the jurisdiction to deal with these appeals. Regarding the argument of the appellant's representative on Memorandum D-11-6-3, counsel added that this memorandum sets out the procedures by which the respondent may make a re-determination or a re-appraisal pursuant to subparagraph 64(*e*)(i) of the *Act*, but that, as agreed by the Tribunal in *Vilico* and *Philips*, the practice set out therein does not confer a right on importers to make requests under section 64 of the *Act*.

As mentioned before, the Tribunal agrees with counsel for the respondent's position. That being said, it is important to note that administrative tribunals are not bound by their previous decisions, although consistency is an important consideration.[7] As was the case with respect to the Tribunal's decisions in *Vilico* and *Philips*, these appeals raise a fundamental jurisdictional issue for the Tribunal, hence the importance for the Tribunal to either reaffirm the conclusions or depart from them on the basis of differences in the facts or dissension with respect to the interpretation of the *Act*. The Tribunal notes, in this regard, that the facts of

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5. R.S.C. 1985 (3rd Supp.), c. 41.
6. Department of National Revenue, "Administrative Policy Respecting Re-determinations/Re-appraisals Made Pursuant to Paragraph 64(*e*) of the *Customs Act*" (July 20, 1994).
7. *Supra* note 2 at 6.

these appeals are essentially the same as those in *Vilico* and *Philips*, that is, the respondent's refusals to entertain requests for re-determination under subparagraph 64(*e*)(i) of the *Act*. After having carefully reviewed the relevant provisions of the *Act* and the conclusions reached by the Tribunal in these appeals, the Tribunal adopts the same reasoning as expressed in the following excerpt from *Vilico*:

> A decision made under section 63 or 64 of the Act may be appealed to the Tribunal pursuant to section 67 of the Act. However, the Tribunal is of the view, as stated above, that the only appealable decision that the respondent can make under section 64 of the Act is a re-determination or re-appraisal. Other actions taken in relation to section 63 or 64 of the Act, such as a refusal to consider a request for re-determination, may be reviewable by the Federal Court, but not by the Tribunal.[8] [Emphasis added]

In these appeals, the "[o]ther actions taken in relation to section 63 or 64 of the Act" (i.e. the Revenue Canada letter and the DAS forms), are again refusals to consider the appellant's requests for re-determination and they may be reviewable by the Federal Court of Canada, but not by the Tribunal.

With respect to Memorandum D11-6-3, given the Tribunal's conclusion that the Revenue Canada letter does not constitute a decision by the respondent, the Tribunal believes that the contents of that letter with respect to Memorandum D11-6-3 are now irrelevant for the purpose of these appeals. In any event, the Tribunal is of the view that the decisions in *Philips* and *Vilico* pointedly concluded that Memorandum D11-6-3 does not confer any right on the appellant to make requests under section 64 of the *Act*.

Pierre Gosselin
Pierre Gosselin
Presiding Member

8. *Ibid.*