CANADIAN INTERNATIONAL TRADE TRIBUNAL

TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Ottawa, Thursday, December 21, 2000

Appeal No. AP-97-133

IN THE MATTER OF a preliminary issue of jurisdiction in an appeal filed on behalf of Chicago Rawhide Products Canada Ltd. under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue to refuse to entertain a request for redetermination pursuant to section 63 of the *Customs Act*.

BETWEEN

CHICAGO RAWHIDE PRODUCTS CANADA LTD. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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CANADA

UNOFFICIAL SUMMARY

Appeal No. AP-97-133

CHICAGO RAWHIDE PRODUCTS CANADA LTD. **Appellant**

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE **Respondent**

This is in respect of a preliminary issue of jurisdiction in an appeal under section 67 of the *Customs Act*. The appeal is with respect to the respondent's refusal to entertain a request for redetermination pursuant to section 63, on the ground that no decision concerning tariff classification was made by the respondent pursuant to section 60 or 61. The Tribunal requested submissions from the parties regarding its jurisdiction to hear and decide this appeal in view of the position taken in *Vilico Optical* and *Philips Electronics*. The appellant submitted that the Tribunal has jurisdiction to consider the matter, as decisions under sections 60 and 63 have been rendered by the respondent. The respondent submitted that the Tribunal has no jurisdiction to hear the matter, as the respondent's decision not to entertain a request for redetermination under section 63 did not constitute a decision for purposes of section 67.

HELD: The appeal is dismissed. Having reviewed the submissions received, the Tribunal is of the view that the respondent's refusal to entertain a request for redetermination under section 63 of the *Customs Act* did not constitute a decision on the merits. As such, and in accordance with the Tribunal's decisions in *Vilico Optical* and *Philips Electronics*, there is no decision from which to appeal to the Tribunal pursuant to section 67. As such, the Tribunal has no jurisdiction to consider this appeal.

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	October 19, 2000
Date of Decision:	December 21, 2000
Tribunal Member:	Pierre Gosselin, Presiding Member
Counsel for the Tribunal:	John Dodsworth Dominique Laporte (Articling Student)
Clerk of the Tribunal:	Anne Turcotte
Parties:	Richard R. Ducharme, for the appellant Kim Conboy, for the respondent

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CANADIAN INTERNATIONAL TRADE TRIBUNAL

TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal No. AP-97-133

CHICAGO RAWHIDE PRODUCTS CANADA LTD. Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE Respondent

TRIBUNAL: PIERRE GOSSELIN, Presiding Member

REASONS FOR DECISION

INTRODUCTION

This is in respect of a preliminary issue of jurisdiction in an appeal pursuant to subsection 67(1) of the *Customs Act*[1] from a decision of the Deputy Minister of National Revenue (now the Commissioner of the Canada Customs and Revenue Agency) to refuse to entertain a request for redetermination of tariff classification pursuant to section 63. The goods in issue are oil seals and were imported in May 1996 (transaction No. 13177013725412). On May 1, 1997, the appellant filed a request for a change in tariff treatment in respect of the origin of the goods for the transaction at issue, pursuant to section 60. In a letter sent on May 23, 1997, the appellant indicated that Code 9671 of Schedule II to the *Customs Tariff*[2] should have been part of its request of May 1, 1997. On June 10, 1997, a decision allowing the change in tariff treatment in respect of the origin of the goods was rendered. On July 11, 1997, the appellant filed a request for a redetermination by the respondent pursuant to section 63, claiming that the oil seals qualified for an accelerated duty reduction under Code 9671. On December 1, 1997, the respondent issued a decision indicating that no further consideration could be given to the request for redetermination concerning the classification of the oil seals, as no previous decision pursuant to section 60 or 61 had been made to warrant an appeal under section 63. On February 24, 1998, the appellant filed an appeal with the Tribunal under section 67.

The Tribunal was of the view that the present appeal raised a jurisdictional issue similar to the one in *Vilico Optical* v. *DMNR*[3] and in *Philips Electronics* v. *DMNR*.[4] In these appeals, the Tribunal concluded that it did not have jurisdiction to hear the matters, as it found that a decision of the respondent to refuse to entertain requests for a redetermination of the tariff classification pursuant to section 64 of the Act did not constitute a decision for purposes of section 67. Accordingly, on March 4, 1998, the Tribunal requested the parties to file submissions regarding its jurisdiction to hear and decide this appeal in view of *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 would be needed to decide the

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. R.S.C. 1985 (3d Supp.), c. 1.
3. (7 May 1996), AP-94-365 (CITT) [hereinafter *Vilico*].
4. (18 December 1997), AP-95-224 (CITT) [hereinafter *Philips*].

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jurisdictional issue and that, if the Tribunal were to conclude that it has jurisdiction to hear the appeal, then the appeal would be scheduled to be heard on the merits.

ARGUMENT

In its submission, the appellant argued that decisions have been made by the respondent under subsection 60(3) and section 63 of the Act. Therefore, as the appeal was filed within the prescribed time limit, the Tribunal has jurisdiction to hear the matter. The appellant further submitted that it never requested a redetermination of the tariff classification of the oil seals, but instead claimed an accelerated duty reduction order under Code 9671. Finally, the appellant argued that the respondent failed to consider its letter of May 23, 1997, or the code referred therein.

The respondent submitted that subsection 67(1) of the Act grants a right of appeal to the Tribunal with respect to decisions made by the respondent under sections 63 and 64. The respondent stated that, as it was not in the proper form, the appellant's letter of May 23, 1997, was not considered a request for a redetermination of the tariff classification of the oil seals. Thus, the respondent was of the view that the appellant failed to make a request for redetermination under section 60 with respect to the tariff classification of the goods. The respondent argued that the appellant could not make a subsequent request for redetermination pursuant to section 63, given that a request was never made, nor was a decision rendered, pursuant to section 60. As a decision on the merits was never rendered with respect to the classification issue in accordance with section 63, the respondent alleged that the Tribunal lacks jurisdiction to hear this appeal.

The respondent relied on the Tribunal's decisions in *Vilico* and *Philips* in support of his argument that the Tribunal does not have jurisdiction to hear this appeal. In these cases, the respondent argued that the Tribunal held that a refusal of the respondent to entertain the request for redetermination under section 63 or 64 of the Act is not a decision within the meaning of section 67. Only a decision under section 63 or 64 may be appealed to the Tribunal. Other actions taken in relation to section 63 or 64 may be reviewed by the Federal Court of Canada, not by the Tribunal.

DECISION

The Tribunal is of the view that it has the authority to dismiss an appeal at any time for lack of jurisdiction.[5] Further, it is important that the Tribunal address jurisdictional issues in a preliminary manner in order to ensure that it does not inquire into a matter that is beyond the authority given to it by Parliament. In the present case, the respondent's decision pursuant to section 63 of the Act, dated December 1, 1997, reads, in part, as follows:

> No consideration or review of tariff classification can be given to the part of this appeal requesting further redetermination to the oil seals. This is due to the fact that no previous decision pursuant to sec. 60 or 61 of the Customs Act has been made by the Department to warr[a]nt an appeal to the Deputy Minister.

The appellant submitted that it did not request a redetermination of the tariff classification, but instead requested an accelerated duty reduction order under Code 9671. It is not clear to the Tribunal how this argument assists the appellant. In any case, the Tribunal notes that the definition of "tariff classification"

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5. *Newman's Valve* v. *DMNR* (10 October 1997), AP-96-121 (CITT).

found at subsection 2(1) of the Act encompasses classification under a code in Schedule II or VII.[6] As such, the Tribunal is of the opinion that the appellant did, in fact, request a redetermination of the tariff classification pursuant to section 63 of the Act.

It is clear that the respondent did not consider the appellant's request for an accelerated duty reduction order in its December 1, 1997, decision made under section 63 of the Act. Therefore, the Tribunal is of the view that no decision on the merits was issued by the respondent pursuant to section 63. In *Vilico* and *Philips*, the Tribunal held, on the basis of the decision of the Federal Court of Canada in *Mueller Canada* v. *MNR and DMNR*,[7] that there clearly must be a decision of the respondent on the merits of the tariff classification in order to give the Tribunal jurisdiction to hear an appeal under section 67. After having carefully reviewed the relevant provisions of the Act and the conclusions reached by the Tribunal in the previous 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]

The Tribunal concludes that the respondent's refusal to entertain a request for the redetermination of the tariff classification under section 63 of the Act does not constitute a decision on the merits of the tariff classification for purposes of section 67.

The Tribunal is of the view that any order directing the respondent to make a redetermination would be an order of *mandamus*, which the Tribunal has clearly no authority to grant.

For the above reasons, the Tribunal concludes that it does not have jurisdiction to hear this appeal. Consequently, the appeal is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

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6. "tariff classification" means the classification of imported goods under a tariff item in Schedule I to the *Customs Tariff* and, where applicable, under a code in Schedule II or VII to that Act or under any order made pursuant to section 62 or 68 of that Act.
7. 70 F.T.R. 197 (15 November 1993), T-746-93 (FCTD).
8. *Supra* note 2 at 6.