



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Application No. EP-2003-008

American Standard
Bath & Kitchen (Canada)

*Decision and reasons issued
Tuesday, May 25, 2004*

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IN THE MATTER OF an application made by American Standard Bath & Kitchen (Canada) pursuant to section 67.1 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1, for an order extending the time within which a notice of appeal may be filed under section 67.

ORDER OF THE TRIBUNAL

The Canadian International Trade Tribunal grants the application for an extension of time and gives American Standard Bath & Kitchen (Canada) 30 days from the date of this order to file its notice of appeal with the President of the Canada Border Services Agency.

Ellen Fry

Ellen Fry
Presiding Member

Richard Lafontaine

Richard Lafontaine
Member

Zdenek Kvarda

Zdenek Kvarda
Member

Susanne Grimes

Susanne Grimes
Acting Secretary

STATEMENT OF REASONS

BACKGROUND

1. On October 14, 2003, the Commissioner of Canada Customs and Revenue Agency (CCRA) re-determined the tariff classification of sanitary ware imported by American Standard Bath & Kitchen (Canada) (American Standard) pursuant to subsection 60(4) of the *Customs Act*¹ and determined that the goods in issue would retain their original classification.
2. On January 13, 2004, American Standard, through its agent, AMG Logistics, filed a notice of appeal of the CCRA's determination with the Tribunal. On January 28, 2004, the Tribunal informed American Standard of the fact that its notice of appeal had been filed beyond the 90-day time limit prescribed by the *Act* and that its letter of January 13, 2004, would also be treated as an application for an extension of time to appeal under section 67.1 of the *Act*.
3. On February 6, 2004, the Tribunal invited the CCRA to comment on American Standard's application. The Canada Border Services Agency (CBSA) (formerly the CCRA) filed its response on March 8, 2004.

ANALYSIS

4. Section 67 of the *Act* reads in part as follows:

67. (1) A person aggrieved by a decision of the Commissioner made under section 60 or 61 may appeal from the decision to the Canadian International Trade Tribunal by filing a notice of appeal in writing with the Commissioner and the Secretary of the Canadian International Trade Tribunal within ninety days after the time notice of the decision was given.

5. Section 67.1 reads as follows:

67.1 (1) If no notice of appeal has been filed within the time set out in section 67, a person may make an application to the Canadian International Trade Tribunal for an order extending the time within which a notice of appeal may be filed, and the Tribunal may make an order extending the time for appealing and may impose any terms that it considers just.

(2) The application must set out the reasons why the notice of appeal was not filed on time.

(3) The application must be made by filing with the Commissioner and the Secretary of the Canadian International Trade Tribunal the application accompanied by the notice of appeal.

(4) No order may be made under this section unless

(a) the application is made within one year after the expiry of the time set out in section 67; and

(b) the person making the application demonstrates that

(i) within the time set out in section 67 for appealing, the person was unable to act or to give a mandate to act in the person's name or the person had a *bona fide* intention to appeal,

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

- (ii) it would be just and equitable to grant the application,
- (iii) the application was made as soon as circumstances permitted, and
- (iv) there are reasonable grounds for the appeal.

6. Section 67.1 of the *Act* contains five criteria, each of which the applicant must meet in order to succeed in its application for an extension of time.

7. First, paragraph 67.1(4)(a) of the *Act* requires that the application for an extension of time be made within one year after the expiry of the time set out in section 67 to appeal to the Tribunal. In this case, the 90-day period to file an appeal with the Tribunal expired on Sunday, January 11, 2004. Accordingly, the last day to file the application for an extension of time was one year later, i.e. January 12, 2005. The original letter from American Standard to the Tribunal was filed with the Tribunal on January 13, 2004. The complete application for an extension of time, with the reasons explaining why the notice of appeal was not filed on time, was received by the Tribunal on February 2, 2004. The first criterion has consequently been met.

8. Second, subparagraph 67.1(4)(b)(i) of the *Act* requires the applicant to demonstrate that, within the 90-day period prescribed in section 67, it was unable to act or to give a mandate to someone else to act in its name or, alternatively, that it had a *bona fide* intention to appeal within the 90-day prescribed period. According to its letter dated February 2, 2004, American Standard was working on this appeal within the 90-day period. This is supported by the fact that the appeal was filed on the 91st day. Therefore, the Tribunal finds that American Standard had a *bona fide* intention to appeal within the 90-day prescribed period. The second criterion has therefore been met.

9. Third, subparagraph 67.1(4)(b)(ii) of the *Act* requires the applicant to demonstrate that it would be just and equitable to grant the application. The appeal was filed only one day late, and the Tribunal believes that it would not be equitable for American Standard to lose its opportunity to argue its case because of such a minor defect. Accordingly, the third criterion has been met.

10. Fourth, subparagraph 67.1(4)(b)(iii) of the *Act* requires the applicant to demonstrate that the application for an extension of time was made as soon as circumstances permitted. The notice of appeal, which was also considered by the Tribunal to be the application for an extension of time, was received on January 13, 2004, i.e. 91 days following the date of the CCRA's decision. On January 28, 2004, the Tribunal informed American Standard that its notice of appeal was filed late and, consequently, directed it to provide the information necessary to support an application for an extension of time by February 17, 2004. On February 2, 2004, prior to this deadline, American Standard filed the required information. In light of these circumstances, the fourth criterion has been met.

11. Fifth, subparagraph 67.1(4)(b)(iv) of the *Act* requires that there be reasonable grounds for the appeal. In the Tribunal's view, the submissions filed by both parties do not indicate that this appeal is frivolous or vexatious. On the contrary, the appeal appears to raise an arguable issue, namely, whether the composition of the goods in issue should lead to a change in the determination of the tariff classification. Accordingly, the fifth criterion has been met.

12. Therefore, the Tribunal finds that American Standard has met all five statutory criteria and that its application for an extension of time should be granted. American Standard has already filed its notice of appeal with the Tribunal. The Tribunal allows 30 days from the date of the issuance of the order for American Standard to file its notice of appeal with the CBSA.

Ellen Fry
Ellen Fry
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

Zdenek Kvarda
Zdenek Kvarda
Member