



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Application No. EP-2004-006

IPSCO Inc.

*Order and reasons issued
Friday, February 11, 2005*

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IN THE MATTER OF an application made by IPSCO Inc. under section 60.2 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1, for an extension of time to make a request for a further re-determination.

ORDER OF THE TRIBUNAL

The Canadian International Trade Tribunal grants the application for an extension of time to make a request for a further re-determination under section 60 of the *Customs Act*.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

STATEMENT OF REASONS

BACKGROUND

1. On February 22, 2001, IPSCO Inc. (IPSCO) imported a pipe mill welding system used for the manufacture of electric resistance weld pipe. The Commissioner of the Canada Customs and Revenue Agency (CCRA) classified the welding system under classification No. 8515.21.10.00 of the schedule to the *Customs Tariff*¹ and the seam annealer system under classification No. 8514.40.90.90. On October 24, 2002, IPSCO applied for a refund of duties paid, on the basis that the goods were not properly classified and argued that the welding system should be classified in its entirety under either classification No. 8455.10.00.00 or classification No. 8455.90.90.00.

2. On June 17, 2003, the CCRA denied the request for a refund and re-determined, pursuant to paragraph 59(1)(a) of the *Customs Act*,² the classification of the welding system under the same classification number. On September 16, 2003, IPSCO requested, pursuant to section 60 of the *Act*, a re-determination of the tariff classification. At the same time, it requested an extension of time to file the request under section 60.1. On September 18, 2003, the CCRA advised IPSCO that its requests were filed beyond the 90-day time frame and requested information to support its request for a time extension. On October 8, 2003, IPSCO filed the additional information in support of its request. On April 20, 2004, the CCRA denied the request for an extension of time on the basis that it would not be just and equitable to other importers to grant the application.

3. By a letter sent to the Canadian International Trade Tribunal (the Tribunal), dated June 14, 2004, IPSCO applied for an extension of time to make a request for a further re-determination under section 60.2 of the *Act*.

4. On June 30, 2004, the Tribunal invited the Canada Border Services Agency (CBSA) (formerly the CCRA) to provide its written submissions on IPSCO's application under section 60.2 of the *Act*. On July 22, 2004, the CBSA informed the Tribunal that it was not taking any position in respect of the application for an extension of time filed by IPSCO.

ANALYSIS

5. Section 60.2 of the *Act* reads as follows:

60.2 (1) A person who has made an application under section 60.1 may apply to the Canadian International Trade Tribunal to have the application granted after either

(a) the Commissioner has refused the application: or

(b) ninety days have elapsed after the application was made and the Commissioner has not notified the person of the Commissioner's decision.

If paragraph (a) applies, the application under this subsection must be made within ninety days after the application is refused.

(2) The application must be made by filing with the Commissioner and the Secretary of the Canadian International Trade Tribunal a copy of the application referred to in section 60.1 and, if notice has been given under subsection 60.1(4), a copy of the notice.

1. S.C. 1997, c. 36.

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

(3) The Canadian International Trade Tribunal may dispose of an application by dismissing or granting it and, in granting an application, it may impose any terms that it considers just or order that the request be deemed to be a valid request as of the date of the order.

(4) No application may be granted under this section unless

(a) the application under subsection 60.1(1) was made within one year after the expiry of the time set out in section 60; and

(b) the person making the application demonstrates that

(i) within the time set out in section 60, 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 make a request,

(ii) it would be just and equitable to grant the application, and

(iii) the application was made as soon as circumstances permitted.

6. The above provision contains four tests, each of which an applicant must meet in order to succeed in an application to the Tribunal for an extension of time to make a request for a further re-determination by the CBSA.

7. The first requirement is that the application under section 60.1 of the *Act* be made within one year of the date for making a request for a re-determination or further re-determination of a tariff classification under section 60. In this case, both the application under section 60.1 and the request for a re-determination were made on the same date and satisfy this requirement.

8. The second requirement, at subparagraph 60.2(4)(b)(i) of the *Act*, is that IPSCO demonstrate that, within the prescribed period, it was unable to act in response to the CCRA's re-determination or to give a mandate to someone else to act in its name. Alternatively, IPSCO could prove that it had a *bona fide* intention to make a request for a further re-determination within the prescribed period.

9. In this regard, the Tribunal notes that IPSCO's request for a re-determination pursuant to subsection 60(1) of the *Act* was made on September 16, 2003. The 90-day appeal period had expired on September 15, 2003, such that the application was late by only one day. Moreover, according to the additional information requested by the CBSA and provided by IPSCO on October 8, 2003, the applicant 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 IPSCO had a *bona fide* intention to appeal within the 90-day prescribed period, thus satisfying the second requirement.

10. The Tribunal is of the view that IPSCO has also met the third requirement, at subparagraph 60.2(4)(b)(ii) of the *Act*, in that it has demonstrated that it would be just and equitable to grant the application. The Tribunal notes that the CBSA's decision will have a significant impact on IPSCO. The Tribunal further notes that the welding equipment is custom made and as such does not agree with the CCRA that others will be unfairly disadvantaged should the extension be granted. The application was filed one day late, and the Tribunal believes that it would not be equitable for IPSCO to lose its opportunity to argue its case because of such a minor defect.

11. With respect to the fourth requirement, at subparagraph 60.2(4)(b)(iii) of the *Act*, which requires that IPSCO demonstrate that its "application was made as soon as circumstances permitted", the Tribunal is of the view that it must consider the circumstances surrounding IPSCO's application to the CCRA pursuant to section 60.1³ of the *Act* and, more specifically, the fact that a period of 91 days had elapsed between the CCRA's notice of re-determination and IPSCO's application under subsection 60.1(1). The Tribunal also

3. See *Bernard Chaus Inc.* (4 December 2003), EP-2003-001 (CITT).

notes the relative complexity of this matter and IPSCO's argument with respect to a recent decision of the Federal Court of Appeal that was rendered after the CCRA's re-determination and that could be relevant to the present classification issue. Therefore, the Tribunal is of the view that the application was made as soon as circumstances permitted and that this requirement was met.

DECISION

12. In light of the foregoing reasons, the Tribunal finds that IPSCO has met all four statutory requirements and that its application should succeed. Therefore, the Tribunal grants the application for an extension of time for the reasons cited above and allows IPSCO until March 18, 2005, to make its request for a further re-determination under section 60 of the *Act*.

Pierre Gosselin
Pierre Gosselin
Presiding Member