



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

ORDER AND REASONS

Application No. EP-2008-002

General Motors of Canada Limited

*Order and reasons issued
Wednesday, February 11, 2009*

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IN THE MATTER OF an application made by General Motors of Canada Limited, under section 67.1 of the *Customs Act*, for an order extending the time within which a notice of appeal may be filed under section 67 of the *Customs Act* with respect to a decision on an advance ruling dated August 12, 2008, issued by the President of the Canada Border Services Agency.

ORDER

The Canadian International Trade Tribunal hereby grants the extension of time and gives General Motors of Canada Limited 10 days from the date of this order to file a notice of appeal under section 67 of the *Customs Act*.

Serge Fréchette
Serge Fréchette
Presiding Member

Hélène Nadeau
Hélène Nadeau
Secretary

STATEMENT OF REASONS

BACKGROUND

1. This concerns an application under section 67.1 of the *Customs Act*,¹ made by General Motors of Canada Limited (GM), for an order extending the time to file a notice of appeal under section 67 of the *Act*. The application concerns a decision on an advance ruling dated August 12, 2008, issued by the President of the Canada Border Services Agency (CBSA), dealing with automatic hydraulic transmissions (the transmissions). It is GM's position that the transmissions should be classified in heading No. 99.61. The CBSA has classified the transmissions in heading No. 87.08.

2. On January 31, 2008, GM requested a further re-determination of an advance ruling pursuant to section 60 of the *Act*. On August 12, 2008, the CBSA issued a decision confirming its initial determination with regard to the advance ruling pursuant to subsection 60(4).

3. On November 14, 2008, GM filed an appeal of the CBSA's further re-determination with the Canadian International Trade Tribunal (the Tribunal) pursuant to section 67 of the *Act*.

4. By way of a letter dated November 19, 2008, the Tribunal informed GM that its notice of appeal was not filed in a timely manner. Pursuant to subsection 67(1) of the *Act*, GM had 90 days, that is, until November 10, 2008, to file a notice of appeal. The Tribunal further informed GM that it could file an application for an order extending the time within which a notice of appeal may be filed pursuant to subsection 67.1 and, in so doing, attempt to meet the conditions set out in that portion of the *Act*.

5. On November 20, 2008, GM filed an application with the Tribunal for an order extending the time within which a notice of appeal may be filed.

ANALYSIS

6. Section 67.1 of the *Act* sets out five conditions that are cumulative, that is, that must all be met, in order for the Tribunal to grant an application of this kind.

7. First, pursuant to paragraph 67.1(4)(a) of the *Act*, it is requisite that the application be made within one year of the expiry of the 90-day time limit set out in subsection 67(1). GM made its application within 6 days of the late filing of its appeal of the CBSA's further re-determination and within 1 day of the Tribunal's letter informing it of that lateness. The Tribunal is thus satisfied that GM has met this condition under section 67.1.

8. Second, pursuant to subparagraph 67.1(4)(b)(i) of the *Act*, it is requisite that GM demonstrate that it was unable to act or to give a mandate to act in its name, with regard to a timely appeal of the CBSA's further re-determination. In the alternative, this subparagraph gives GM the opportunity to prove that it had a *bona fide* intention to appeal.

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

9. With regard to this condition, GM submitted that, in the interest of economy, it had been waiting for the outcome of an appeal concerning facts that it considered similar and which presently remains before the Tribunal. The CBSA submitted that the act of waiting is contrary to a *bona fide* intention to appeal and indicates that GM consciously decided not to appeal within the requisite time limit and to evaluate instead the merits of the appeal at a later date.

10. In response to the CBSA's submission, GM submitted that the appeal was late due to human error involving two decisions of the CBSA that it was statutorily able to appeal and concerning which appeal deadlines were mismatched. GM stated that the appeal was filed on the same day on which the human error was detected, i.e. November 14, 2008. GM further submitted that the appeal before the Tribunal, the outcome of which it had been awaiting, had a bearing in terms of economy, but no ultimate bearing in terms of preserving and utilizing its right to appeal the further re-determination concerning the transmissions. That is, if a decision with regard to the appeal presently before the Tribunal had not been released before the 90-day time limit, GM intended nonetheless to file an appeal concerning the transmissions.

11. The Tribunal is satisfied with GM's submissions with regard to the second condition under section 67.1 of the *Act* and concludes that GM, at all material times, had a *bona fide* intention to appeal. The Tribunal finds it instructive that, while the appeal of which GM was awaiting the outcome presently remains before the Tribunal, GM nonetheless acted by filing an appeal of the CBSA's further re-determination. That filing was four days late, indicative of the fact that a *bona fide* intention to file an appeal was thwarted by human error. The Tribunal is disinclined to deny an importer statutory recourse because of such a breach that was thereafter speedily rectified.

12. Third, pursuant to subparagraph 67.1(4)(b)(ii) of the *Act*, it is requisite that GM demonstrate that it would be just and equitable to grant the application. With regard to this condition, GM submitted that the CBSA's further re-determination concerns significant duty amounts. Further, GM submitted that, without the extension of time, it would be denied an opportunity to seek the clarification of a long-standing ambiguity. GM also submitted that a four-day delay in the filing of its appeal cannot be viewed as prejudicial to the interests of the CBSA.

13. The CBSA submitted that GM is a sophisticated importer. Further, the CBSA submitted that a refusal to grant an extension of time does not terminally deny GM recourse, as GM is seeking to appeal an advance ruling and thus, may still appeal tariff classification decisions made upon importation.

14. The Tribunal finds that GM has satisfied the third condition under section 67.1 of the *Act*. A short delay in the filing of an appeal would typically not be prejudicial to the interests of the CBSA. Further, it is just, equitable and in keeping with expediency that the substantive matter be determined at the first opportunity, in order to clarify any ambiguities that may exist.

15. Fourth, pursuant to subparagraph 67.1(4)(b)(iii) of the *Act*, it is requisite that GM demonstrate that it made the application as soon as circumstances permitted. In this regard, GM submitted that the application was made within six days of determining that its appeal had not been filed in a timely manner. The CBSA did not make submissions in its brief with regard to this condition. The Tribunal is satisfied that the speed with which GM acted meets the requirement of this condition.

16. Finally, pursuant to subparagraph 67.1(4)(b)(iv) of the *Act*, it is requisite that GM demonstrate that there are reasonable grounds for the appeal. In this regard, GM submitted that there is an appeal pending which concerns facts that it considers similar. The CBSA submitted that the Tribunal held that this condition requires the applicant to deal with certain aspects of the substance of the appeal.²

17. GM further submitted that it seeks the appeal in order to probe the applicability of a prior decision of the Tariff Board to the facts relating to the transmissions. The Tribunal is satisfied with GM's submission that the applicability of a Tariff Board decision evidences the existence of reasonable ground of appeal.

DECISION

18. As a result of the foregoing, the Tribunal hereby grants the extension of time and gives GM 10 days from the date of this order to file a notice of appeal under section 67 of the *Act*.

Serge Fréchette

Serge Fréchette
Presiding Member

2. The CBSA made reference to the Tribunal's order in *Electronic Liquidators Ltd.* (6 November 2006), EP-2005-035 (CITT).