



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Appeals

---

## ORDER AND REASONS

Application No. EP-2007-004

Atlantic Sportswear Mfg. Ltd.

*Order and reasons issued  
Wednesday, November 21, 2007*

**TABLE OF CONTENTS**

ORDER .....i  
STATEMENT OF REASONS .....1

IN THE MATTER OF an application made by Atlantic Sportswear Mfg. Ltd., under section 60.2 of the *Customs Act*, for an order extending the time to file a request for a further re-determination under subsection 60(1) of the *Customs Act* concerning a decision of the President of the Canada Border Services Agency under subsection 59(1) of the *Customs Act* dated May 11, 2006, with respect to original transaction No. 13516010563730.

## ORDER

The Canadian International Trade Tribunal grants the application and allows Atlantic Sportswear Mfg. Ltd. until December 14, 2007, to file a request with the President of the Canada Border Services Agency for a further re-determination under subsection 60(1) of the *Customs Act* with respect to the above transaction number.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

James A. Ogilvy  
James A. Ogilvy  
Member

Ellen Fry  
Ellen Fry  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

## STATEMENT OF REASONS

1. This is an application under section 60.2 of the *Customs Act*<sup>1</sup> for an order extending the time to file a request for a further re-determination under subsection 60(1) with respect to a decision of the President of the Canada Border Services Agency (CBSA) under subsection 59(1) dated May 11, 2006, with respect to original transaction No. 13516010563730.

2. 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 President has refused the application; or
- (b) ninety days have elapsed after the application was made and the President has not notified the person of the President'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 President 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.

(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.

**60.2(1)** La personne qui a présenté une demande de prorogation en vertu de l'article 60.1 peut demander au Tribunal canadien du commerce extérieur d'y faire droit :

- a) soit après le rejet de la demande par le président;
- b) soit à l'expiration d'un délai de quatre-vingt-dix jours suivant la présentation de la demande, si le président ne l'a pas avisée de sa décision.

La demande fondée sur l'alinéa a) est présentée dans les quatre-vingt-dix jours suivant le rejet de la demande.

(2) La demande se fait par dépôt, auprès du président et du secrétaire du Tribunal canadien du commerce extérieur, d'une copie de la demande de prorogation visée à l'article 60.1 et, si un avis a été donné en application du paragraphe 60.1(4), d'une copie de l'avis.

(3) Le Tribunal canadien du commerce extérieur peut rejeter la demande ou y faire droit. Dans ce dernier cas, il peut imposer les conditions qu'il estime justes ou ordonner que la demande de révision ou de réexamen soit réputée valide à compter de la date de l'ordonnance.

(4) Il n'est fait droit à la demande que si les conditions suivantes sont réunies :

- a) la demande de prorogation visée au paragraphe 60.1(1) a été présentée dans l'année suivant l'expiration du délai prévu à l'article 60;
- b) l'auteur de la demande établit ce qui suit :
  - (i) au cours du délai prévu à l'article 60, il n'a pu agir ni mandater quelqu'un pour agir en son nom, ou il avait véritablement l'intention de présenter une demande de révision ou de réexamen,
  - (ii) il serait juste et équitable de faire droit à la demande,
  - (iii) la demande a été présentée dès que possible.

---

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

3. The Tribunal decided that there were sufficient evidence and representations on file to dispose of this matter without holding an oral hearing.

4. Atlantic Sportswear Mfg. Ltd. (Atlantic Sportswear) made representations regarding the conditions set out in subsection 60.2(4) of the *Act* that must be met for an application to be granted. These representations were supported by sworn affidavit evidence.

5. The CBSA submitted that this application should be dismissed on the basis that “. . . there is scant evidence of the Applicant’s *bona fide* intention to make a request for an extension of time *within* the 90-day period, as required by [subparagraph] 60.2(4)(i) of the *Customs Act*.” The CBSA made no other representations and tendered no evidence.

6. The Tribunal notes that the CBSA issued its decision under subsection 59(1) of the *Act* on May 11, 2006, and that Atlantic Sportswear instructed its customs broker to appeal the said decision nine days later, on May 20, 2006. The Tribunal has no reason to doubt the veracity of the customs broker’s sworn affidavit to this effect. In the Tribunal’s view, the giving of instructions on May 20, 2006, constitutes evidence of a *bona fide* intention to make a request for further re-determination within the 90-day time frame set out in subsection 60(1). The Tribunal is also of the view that the clerical error committed by Atlantic Sportswear’s customs broker in calculating that deadline could not and did not alter the fact that Atlantic Sportswear had indeed expressed a *bona fide* intention to act *within* the time set out in section 60.

7. For the foregoing reasons and because the Tribunal has determined that the other conditions set out in subsection 60.2(4) of the *Act* have been met, the application is granted.

Pierre Gosselin  
Pierre Gosselin  
Presiding Member

James A. Ogilvy  
James A. Ogilvy  
Member

Ellen Fry  
Ellen Fry  
Member